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Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

MORRIS WHITRIDGE and RICHARD J. WHITE,
Trading as Whitridge, White & Co.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Brief for the Respondents.

C. G. Bradstreet, Walker and Centre Streets, N. Y.

In the Supreme Court of the United States,

OCTOBER TERM, 1904.

THE UNITED STATES,
Petitioner,

vs.

MORRIS WHITRIDGE and RICHARD J. WHITE,
trading as Whitridge, White & Co.,
Respondents.

BRIEF FOR RESPONDENTS.

Statement.

The firm of Whitridge, White & Co., imported at Baltimore, June 18, 1900, certain gunnies from India, and at once entered them at the custom house for duty purposes (Record p. 4). The duty prescribed by law on such gunnies was a compound one, partly *ad valorem* and partly otherwise (Tariff Act of 1897—30 Stats. 151,—Par. 341,) but with no part of the *rates* of duty are we concerned, save as the *ad valorem* part made the valuation of the goods a necessary factor in its reckoning.

Nor are we concerned with the entire matter of the valuation, for this involves two distinct parts, (1) the appraisement, or determination of the foreign market value of the goods, on which our statutes require that *ad valorem* duties must be reckoned, and which value they prescribe shall be fixed and determined in the currency of the exporting country—unless purchase was actually made in some other currency (Secs. 2 and 10 Act of June 10, 1890) and (2) the trans-

lation or reduction of the ascertained market value to its equivalent in our own money,—a purely clerical function, performed arithmetically by Collectors and their clerks, according to tables of such equivalents duly prescribed for their guidance, by statute or otherwise. Appraisal, on the other hand, is a matter of deliberate judgment as to market values ruling abroad, is confided to officials specially appointed for that function under the statutes, regulated by careful provisions of those statutes, and subject thereunder to a quasi-judicial review at the instance of either Collector or merchant (Sec. 13, Act of June 10, 1890). Appraisal in the present case was performed by the officials to whom that function pertains under the law; they found and reported the value correct, as shown by the invoice; there was no appeal taken from their finding by any party, and thus the appraisal was complete before the Collector begun the translation of the rupees at all.

With the market value of the gunnies, therefore, we are not concerned, but only with the translation as made by the Baltimore Collector, of this duly ascertained foreign market value of the gunnies, into an equivalent in United States currency.

The issue in this case is whether this translation was properly and legally made, as the petitioner says, or illegally, as the respondents say, and as the lower tribunals have decided.

The translation of foreign currencies has been closely regulated by statute, for over a century, and still is so. If the Collector's act was in accord with the statute, it is of course legal, but if it violated the statute, the courts below were right in overruling him, and must be affirmed.

The Statute as to Foreign Currencies, and the Official Proceedings to Give it Effect.

The statute as to currency valuations, current at the time in question, was Sec. 25, Act of August 28, 1894 (28 Stats. 509), and ran as follows:

> "That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the

Mint and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July and October in each year. And the values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: *Provided*, that the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

In accordance with this statute, the values of the standard foreign coins in circulation are estimated and proclaimed quarterly, the proclamation of April 1, 1900 (the exportation of the gunnies in suit having occurred on April 19, 1900—Record, p. 11, findings 1 and 5), being published as Treasury Decision No. 22,120, and containing, in a tabulated ascertainment by the Director of the Mint, covering the currency of many countries, alphabetically arranged, the following as to India:

Country.	Standard.	Monetary Unit.	Value in terms of U. S. Gold Dollar.	Coins.
India	Silver	Rupee	.207	Gold: mohur ($7.105). Silver: rupee and divisions.

A foot note appeared at the end of the table, reading as follows: "Value of the rupee to be determined by consular certificate" (finding 6).

The Secretary of the Treasury appended to this promulgation an order to all Collectors of Customs that the values so proclaimed

were " to be followed in estimating the value of all foreign merchandise exported to the United States on or after April 1, 1900, expressed in any such metallic currencies," but this was merely a setting forth of the express direction of the statute itself.

Concerning the foot note, and as it will presently appear that the Collector in fact determined the value of the rupees in this case by consular certificate, it may be well to say, in passing, that he did not do so in pursuance of the foot note; nor did the Mint Director make any such foot note at the time when the law of 1894 was passed, nor until April, 1897 (T. D. 17973); that no weight has been laid on it throughout this or any of the cases on this issue; that the Secretary, as above stated, did not direct Collectors to follow it, but to follow the proclaimed values in the table; and that the making of any such note or comment was manifestly beyond the authority of the Director of the Mint, its purport being not in explanation, but in contradiction of the proclaimed values and of the law.

U. S. vs. Goodsell Co., 91 Fed. Rep. 519 (C. C. A.) and cases therein cited.

Counsel for the Government do not in their brief or argument contend that the foot note was warranted by law, or that it is of any legal force.

Such being the statute and the proceedings had under it, the respondents assert that the Collector, in translating the rupees of their invoice, after that had been appraised as properly stating the market value of the goods in Indian currency, was bound to translate them at 20.7 cents each and to assess the *ad valorem* portion of the duty on only the resulting sum.

The actual Procedure of the Collector with regard to the Invoice in controversy.

What the Collector actually did, was to translate them at 32 cents each (Record, p. 12, finding 7), *following in this regard a certificate of the United States Consul, appended to the invoice in question*, which declared " that the exchange value of the rupee, in which

currency the annexed invoice of merchandise is made out, is at this date 32 cents, estimated in United States gold dollars" (p. 11, finding 5). He thus reached a valuation about 54 per cent. greater than would have resulted from following the proclaimed value, and on this sum the *ad valorem* duty was reckoned.

In thus departing from the requirements of Sec. 25 of the Act of 1894, the Collector was following certain rulings of the Treasury Department, published for the guidance of all Collectors, in 1897, and as these rulings are the basis for all the proceedings in the present and all the other cases as to the valuation of Indian rupees, they are hereto appended in full:

T. D. 17766. "*Value of rupee of India, as applied to bales of tanned skins imported from Madras, India—Appeal from decision of Board, which has no jurisdiction in the case.*

"TREASURY DEPARTMENT, February 3, 1897.

"SIR:—The Department is in receipt of your letter of the 27th ultimo, inviting attention to the decision of the Board of General Appraisers (not published), dated the 9th ultimo, in the matter of protest No. 31408 B-347, of J. Alston Newhall & Co., involving the question as to the amount of duty chargeable on certain 25 bales of tanned skins from Madras, India, entered at your port during May, 1896.

"It appears that the merchandise in this case was shipped from Madras, India, during the first quarter of the year, 1896, for which period the value of the rupee as declared by the Director of the Mint, was equivalent to 23-3/10 cents in United States currency. In transmitting the invoices, however, the United States consular agent at Madras attached a certificate stating the demand rate of exchange between Madras and London, and between New York and London at the time of shipment, from which certification it appeared that the actual value of the rupee at the time of shipment of the said merchandise, was 28-5/10 cents. You were accordingly instructed to assess duty on the basis of the valuation of the rupee (28-5/10 cents) as shown by the consular certificate attached to the invoice.

"The Board of General Appraisers finds that the certificate of the consular officer is not in due form and that it is therefore null and void, and that the invoice should have

been treated as if there were no currency certificate accompanying it; the Board further holds that the value of the rupee should have been estimated as equivalent to 23-3/10 cents, in accordance with the value as declared by the Director of the Mint under date of January 1, 1896.

" In reply to your request for further instructions in this matter, I have to state that this Department cannot concede the jurisdiction of the Board of General Appraisers in this case, nor does the Board seem to have properly considered the requirements of law on this subject. The value of the rupee was declared by the Director of the Mint as equivalent to 23-3/10 cents in United States coin. No currency certificate of any kind was therefore necessary, and the United States consul at Madras was not called upon to certify to any valuation of the rupee at the time of shipment inasmuch as there was no depreciation from the declared value (23-3/10 cents) at that time. Had the rupee depreciated so that its value in United States currency was less than 23-3/10 cents, it would have been necessary that a currency certificate of the United States consul, in the usual form (Consular Form No. 144), should have been attached. The former decisions of the Board of General Appraisers (G. A. 3487 and G. A. 3514), referred to by that Board as authority for the present decision, involve a different issue. In those cases the currency in which the invoices were made out was claimed to be a depreciated currency, and the Board of General Appraisers very properly held that in the absence of a consular certificate (Form No. 144) the value of the currency must be computed as declared by the Director of the mint.

" The present case involves no question as to the sufficiency or insufficiency of any consular certificate of depreciation. It, on the contrary, rests entirely upon the closing provision of Section 25 of the Act of August 28, 1894, which is as follows: ' That the Secretary of the Treasury may order the reliquidation of any entry at a different value, whenever satisfactory evidence shall be produced to him, showing that the value in United States currency, of the foreign money specified in the invoice, was, at the date of certification, at least 10 per cent. more or less than the value proclaimed during the quarter in which the consular

certification occurred.' As the invoice and accompanying papers submitted by you for the inspection of this Department, at time of entry, clearly showed that the true value of the rupee at the time that the invoice was made out was 23 per cent greater than the value declared by the Director of the Mint on January 1, 1896, you were duly instructed to assess duty on the basis of the higher valuation. The question at issue in this case is one, therefore, specially relegated by said Section 25 to the supervision of the Secretary of the Treasury. In view of the decision of the United States Supreme Court in the case of the United States v. Klingenberg (U. S. Rep. 153, p. 93), the Board of General Appraisers is entirely without jurisdiction, and its decision, in the opinion of this Department, is clearly null and void. The protest should have been referred to this Department, and not to the Board of General Appraisers, but as the Board deemed it advisable to assume jurisdiction in this case, you are hereby directed to file an application for review of said decision, in accordance with the provisions of Section 15 of the Act of June 10, 1890.

" Respectfully, yours,

" CHARLES S. HAMLIN,

" Assistant Secretary.

" (2264–h.)

" Collector of Customs,

" Boston, Mass."

" T. D. 18110. " *Value of Rupee of India.*

" TREASURY DEPARTMENT,

" June 16, 1897.

" SIR :

" The Department duly received your letters of the 24th and 26th ultimo and 11th instant, submitting the protests of various importers against your liquidation of entries covering merchandise imported from the East Indies after February 3 last, on a basis of a value of the rupee of India, greater than that proclaimed by the Director of the United States Mint

for the quarter of the year in which the goods were exported to the United States.

" It appears that in liquidating the entries in question you converted the rupee into United States currency at the rate of exchange certified to by the United States consul, which was considerably higher than the proclaimed rate.

" As the actual value of the rupee is shown to have been, at the time of shipment, greater by more than 10 per cent. than the proclaimed value, and as the evidence of such actual value contained in the certification of the United States consular officer on the invoices submitted with the protest is satisfactory to the Department, your action in liquidating said entries at the value stated by that officer is hereby approved under the authority of section 25 of the act of August 28, 1894.

" Respectfully yours,
" O. L. SPAULDING,
" Acting Secretary.

" (2264 h.),
" Collector of Customs,
" Boston, Mass."

T. D. 18327—Value of Rupee of India.

TREASURY DEPARTMENT,
September 4, 1897.

GENTLEMEN :—

In reply to your letter of the 30th ultimo, you are informed that so long as the actual exchange value of the rupee of India exceeds by more than 10 per cent. the value proclaimed according to the quarterly estimates of the director of the mint, such actual value (and not the proclaimed value) will be taken in accordance with the provisions of section 25 of the Act of August 28, 1894, as a basis for the computation of duties on merchandise invoiced in rupees.

Respectfully yours,
W. B. HOWELL,
Assistant Secretary.

Fulton Bag and Cotton Mills, Atlanta, Ga.

It will be observed that in these rulings the Treasury Department commits itself distinctly to the view, that Collectors are warranted in ignoring the intrinsic values of foreign coins, as ascertained and proclaimed, whenever the United States consuls shall certify that the "demand rate of exchange" of such currencies is at least ten per cent. more or less than the proclaimed value, *and that such a certificate creates a case within the proviso to Sec. 25, as one "where satisfactory evidence is brought before the Secretary,"* etc. The assertion that such consular certificates are "satisfactory evidence to the Department" is reiterated in them, and the action of Collectors in adopting the exchange valuation pursuant to them

Absolute certainty as to what the Treasury intended to accomplish by these reliquidations, however, is provided by Treasury decision 23649, ordering appeal to the court in the present case, as follows:

(23649.)

Value of Indian Rupee.

Decision of Board of United States General Appraisers as to the interpretation to be given to the proviso to section 25, act of 1894, appealed from.

TREASURY DEPARTMENT, *April* 5, 1902.

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, dated the 29th ultimo (G. A. 5110), on protest (49779*b*–1321) of Whitridge, White & Co., wherein it is held that the proviso to section 25 of the act of August 28, 1894, has reference only to the coin or silver value of the Indian rupee and that there was, therefore, no authority in law for collecting duties on the merchandise based on the exchange or actual commercial value of the rupee at the time of exportation of the merchandise under consideration.

In order that this question may receive the judicial interpretation of the courts you are hereby directed to file an appeal from the decision of the Board of United States General Appraisers in this case, in accordance with the provisions of section 15 of the act of June 10, 1890.

Respectfully,
(2264*h*.)

O. L. SPAULDING,
Assistant Secretary.

T. D. 22511—" *Rupee of India.*

" *In the liquidation of entries the value of the Indian rupee is to be estimated in the first instance at the value proclaimed by the Director of the Mint.*

" TREASURY DEPARTMENT,
September 26, 1900.

" SIR : Referring to Department's instructions of February 3, 1897 (T. D. 17766), and those of June 16, 1897 (T. D. 18110), under which a practice was inaugurated of liquidating entries covering merchandise imported from India, and invoiced in rupees, on a basis of a valuation for the rupee other than that declared by the Director of the Mint for the quarter covering the respective shipments, I have to inform you that it has been recently held by the United States Circuit Court for the District of Massachusetts that such practice was not in accordance with the requirements of section 25 of the Act of August 28, 1894. While the Department does not concede the correctness of the decision of the United States Circuit Court for the District of Massachusetts in this matter, and has requested the Attorney General to file an appeal therefrom, in accordance with the provisions of section 15 of the act of June 10, 1890, nevertheless, in order to avoid further litigation as to future importations, and in order to fully protect the interests of the revenue, you are hereby instructed to disregard said rulings of the Department (T. D. 17766 and 18110), in so far as future importations are concerned, as to which you will be governed solely by the value proclaimed for the rupee by the Director of t e Mint for the quarter covering the respective shipments. If such proclaimed value is less than that shown by the consular certificates accompanying the invoices you will report the fact immediately to this Department, so that a reliquidation should one be deemed necessary, may be ordered and the collection of the increased duties chargeable on such importations secured.

" Respectfully,
" O. L. SPALDING,
" Acting Secretary.

" Collector of Customs,
" Boston, Mass."

Under this order, very many entries were of course liquidated or reliquidated at the proclaimed value of the rupee, but no refund in any case was actually made, and steps were in every case taken to reliquidate these entries yet again, at exchange values. Boston merchants having made inquiry as to this, elicited the following answer from the Treasury Department:

"TREASURY DEPARTMENT,
"Office of the Secretary.

"WASHINGTON, April 4, 1901.

"MESSRS. HITCHINGS & COULTHURST,
"145 South Street, Boston.

"GENTLEMEN—In reply to your letter of the 30th ultimo, further in regard to the liquidation of entry of 17,778, covering merchandise imported from India, and invoiced in rupees, I have to state that in cases of this character the appreciation of the money of the invoice is considered, and not, as you suppose, the appreciation of metal in the coin.

"Respectfully,
"(Signed), O. L. SPAULDING,
"Assistant Secretary,
"A. J."

"No enclosure."

This was followed on May 18, 1901, by another ruling, as follows:

T. D. 23050. "*Entries of merchandise invoiced in rupees.*

"(Circular No. 61).

"TREASURY DEPARTMENT,

"MAY 18, 1901.

"TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS.

"Referring to the Department's decision of September 26, 1900 (T. D. 22511), collectors and other officers of the customs are instructed as to all entries of merchandise invoiced in rupees made within one year prior to the receipt of these in-

structions and liquidated on the basis of a value for such rupee other than that estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, to liquidate said entries on the basis of the proclaimed value of the rupee for the respective quarters covering shipments as though no liquidation had theretofore been made. Immediately thereafter all the papers will be forwarded to the Department for such action as it may deem proper in accordance with the instructions of September 26, 1900, above mentioned. No refunds are to be made pending the receipt of further instructions from the Department, and the liquidation of past entries against which no protests have been filed or against which protests have been filed, but subsequently waived or withdrawn, will not be reopened.

"O. L. SPAULDING,
"Acting Secretary."

Pursuant to this (Record, p. 5), the respondents' entry of gunnies, being made June 18, 1900, and thus within one year prior, was liquidated (*i. e.* reliquidated) on the basis of the proclaimed value for the quarter covering the shipment (April-June, 1900), but refund was withheld from the importers, and the papers (entry, invoice, consul's certificate, etc.), forwarded to the Department for action in accordance with the instructions of September 26, 1900, which had been to the effect that "if such proclaimed value is less than that *shown by the consular certificates accompanying the invoices* you will report the fact immediately to this Department, so that a reliquidation should one be necessary, may be ordered and the collection of the increased duties chargeable on such importations secured."

The papers in this case were thus forwarded on May 29, 1901, and on June 6th (Record, p. 7), the Treasury Department returned them, informing the Collector that "satisfactory evidence" had "been produced to the Secretary of the Treasury," showing that the value of the rupee was, on the date of shipment of these gunnies, 32 cents, which being more than ten per cent. in excess of the proclaimed value for the quarter year in question, the Collector was directed to reliquidate again this entry, translating the rupee at the higher value, precisely as he had originally done. Be it remembered that the consular certificate, appended to the invoice and entry papers, had been produced to the Secretary by his own

orders, and that it contained the assertion of an "exchange value" of 32 cents for the rupee,—exactly the value which he then proceeded to adopt, and the only scintilla of proof of any such value which the record anywhere contains.

Against this new reliquidation, which restored the original liquidation, the respondents duly protested as they had against that (Record, pp. 5 & 6), and this new protest being sent to the General Appraisers, *apparently by the special permission* of the Secretary, it was sustained by them (Record, p. 15), upon evidence (Record, pp. 8 to 10) and facts agreed between counsel (pp. 11 to 13), and argument, upon the grounds that the proviso to Sec. 25 did not permit the Secretary of the Treasury to depart from "the value of the pure metal" of the rupee in favor of the exchange or any other substituted value, as in this instance had been done (Record, p. 13), and that any liquidation of duties by a Collector, based upon orders from the Secretary in contravention of law, was illegal and a basis for protest, coming within the jurisdiction of the Board *(idem)*.

From this decision the Goverment or the Collector, duly appealed into the United States Circuit Court for the District of Maryland (Record, p. 3 *et seq.*), wherein a decree was made *pro forma* on September 26, 1903, affirmiug in all things the decision of the General Appraisers (Record, p. 16), and from that decree, appeal was again duly taken into the Circuit Court of Appeals for the fourth circuit (Record, p. 1), where full argument was had, and on March 14, 1904, a decision was handed down, affirming those previously rendered in the case, upon grounds set forth in a learned opinion by Judge Boyd (Record, pp. 19 to 25).

From that decision this appeal by writ of *certiorari* has been taken by the Government.

On this résumé of the case, it must be clearly apparent that the precise point of controversy is whether the Government is limited, by the statutes, to the translation of foreign currencies according to the value of their pure metal, or is free to depart from that basis of valuation whenever the adoption of a different one would yield a better revenue. As the quoted publications show, the Treasury has since 1897, throughout this rupee controversy, adhered to the latter view, and despite the remarkable effort of Government counsel to

suppress evidence of facts freely stipulated in Beebe's case, whose every circumstance was identical with those herein (See stipulation in Beebe's case, printed as Appendix A. hereto) it is still amply manifest that the present case presents a typical instance of rejection of the metal value and resort to the exchange value, of the Indian rupee.

Hence we have to consider the historical position of Congress as to currency valuations, and its present position as viewed in the light of such history.

Dutiable Value of Foreign Currencies.

From our earliest days, the fixing of equivalents in our own currency for the various foreign value units, has always been a matter of careful statutory regulation. In the Act of July 31, 1789 (1 Stat. 29), Sec. 18, enacted rigid equivalents for the chief foreign coinages found in invoices of imported merchandise, and added :

> " and all other denominations of money in value as near as may be to the said rates ; and the invoices of all importations shal be made out in the currency of the place or country from whence the importations shall be made, and not otherwise.

It is noteworthy that under this earliest enactment on the subject, no fluctuation either in the value of the coin metal, or in the conventional or " exchange value " of the foreign coin, could have been considered by the Treasury Department on the assessment of duties. The evident plan of Congress was to fix an invariable measure, so that whatever, more or less than the enacted sum, a merchant might have to pay for his foreign currency, he at all events would know that duty would be assessed on the basis of the enacted sum, and neither more nor less.

This enactment was found in the very same law, and side by side with the provision in its § 18, whereby appraisement at actual foreign values was first required. And from then till now the fixing of market value has gone hand in hand with this " fixed rule of computation," showing that Congress has never regarded translation of foreign currency as any part of the determination of " market values."

The same system was repeatedly re-enacted, in 1790 (1 Stat. 167), 1799 (1 Stat. 627), and continued with mere additions or cor-

rections to the list of declared values, in 1801 (2 Stat. 121), 1834 (4 Stat. 699), 1842 (5 Stat. 496), 1843 (5 Stat. 625), 1846 (9 Stat. 14), etc.

In 1873, the act of March 3 (Rev. Stats. Sec. 3564) embodied a new general method on this subject, as follows :

> "That the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value ; and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and be proclaimed on the first day of January by the Secretary of the Treasury."

But it must be noted that while the method was changed, the rule of pure-metal valuations was strictly adhered to.

In the tariff act of Oct. 1, 1890 (26 Stat. 624), this method was so far amended as to require quarterly instead of annual estimates and proclamations, and the next enactment on the subject was that of 1894, set forth in full in the "statement" in this brief.

Here is over a century of statutory regulation of the matter of translating foreign currencies, on a basis consistently arbitrary throughout. In the earlier laws, Congress itself declared the equivalents to be adopted, and no Collector nor Secretary could then be concerned with any fact or condition, however reasonable or convincing, in favor of resorting to any different equivalent. In the later laws the fixing of the several equivalents was confided to executive officials, but these were most distinctly instructed as to the rule and measure they should adopt, that it must be the pure metal value, and the precise time and manner in which it must be done. No discretion was delegated as to the standard to be chosen, nor the form or time of promulgation, any more than it had been earlier delegated to the Collectors, but the purely executive function of ascertainment (of the amount and nature of the pure metal) and calculation (of the United States value of such pure metal). Unquestionably, under the Act of 1873 or the Act of 1890, any estimate and proclamation by the officials, of another value than the pure metal value, would have been *ultra vires* and wholly null and void, and no such official could have been permitted to plead that because the ascertainment of pure metal values had been finally entrusted to him, his action in ascertaining and announcing exchange values instead was beyond the scrutiny of the

courts. Still more arbitrary and intolerable would have been an attempt by executive officials to subvert, long afterward, their own proclamation as having embodied a misconception of facts or law. And this is as manifestly true of the Act of 1894, unless by the proviso, Congress went about to expunge, and sweep overboard, the very system which it was at the same moment carefully re-enacting.

These currency statutes were repeatedly tested in the courts, for there were of course, in the many aspects of trade, and of the fluctuations of exchange, numerous instances where either the Government or the taxpayer deemed the resort to intrinsic values unjust. Several such cases have been decided in this court, the leading ones, relevant now, being

Arthur v. Richards, 23 Wallace, 246,
Cramer v. Arthur, 12 Otto, 612,
Hadden v. Merritt, 115 U. S., 25,
U. S. v. Klingenberg, 153 U. S., 93.

Arthur v. Richards was a case wherein this court held that the Act of 1873 applied, and proceeded to examine and discuss its provisions, saying of the "pure metal" clause:

> "The plain meaning of this language is, that the value of foreign coins, in United States money, shall be measured by the amount of pure metal contained therein when of standard value; that is when of the weight and fineness required by the laws and regulations of the country where they are produced. This value having been duly ascertained and published by the Superintendent of the Mint and the Secretary of the Treasury, becomes the rule in the cases and for the purposes to which, according to the fair meaning of the Act, it is to be applied. * * * The Government contends that it is to be applied in all cases where the estimation of the value of foreign moneys of account is required by law; and that its principal and, perhaps, most important purpose, is the very one in question, namely: the estimation of the invoice values of imported goods chargeable with *ad valorem* duties.

This the court found to be the correct view, pointing out several reasons, and adding :

> There were also other reasons, if any were needed, having respect to the fictitious par of exchange so long persisted in by the bankers of both countries, which made it expedient for Congress itself to fix the value of the pound sterling.

So that the very same feature of a fictitious exchange value, which the Government now contends warrants it in turning away from the pure metal value, was perceived and discussed many years ago in the Richards case, and as a strong reason for fixing and adhering to a value not liable to be affected by the capricious fluctuations of exchange.

As a reason for construing together, and in harmony, two sections of this currency law, the court further said :

> Otherwise, there would exist two differing methods of computing the values of foreign coins, and two differing rules for estimating the values of goods imported from different countries * * *

In Cramer v. Arthur, the invoice was in Austrian florins, which had been translated, in reckoning the duty, according to the ascertainment and promulgation made under the statute of 1873. The importer adduced evidence tending to show that in fact, his florins had cost less than their proclaimed value, and that the proclamation had ceased to represent the value of the florin correctly, by reason (perhaps) of the demonetization of silver in Austria. But the Supreme Court declined to allow any divergence from the proclaimed value, and said :

> " In that case (Collector v. Richards), we held that the act of 1846 was repealed by the Act of 1873, which expressly repealed all acts and parts of acts inconsistent therewith ; and that, instead of fixed and permanent valuation of foreign coins, which must often involve a departure from the true values, Congress had adopted the juster plan of having them subjected to annual revision by the director of the mint, and announced to the public by proclamation of the Secretary of the Treasury. And as the franc had thus been proclaimed to be worth 19 cents and 3 mills, we decided that the collector rightly adopted that valuation. * * *

"That the florin is the standard money of account of Austria is as evident as that the pound sterling is the standard money of account of Great Britain. The plaintiff's own invoice is a proof of this. Whether represented by a corresponding coin of equal amount is of no consequence. * * * Coin is the basis of the currency of both countries. * * * The silver florin was also formerly a standard coin in Austria, and the florin as a money of account originally derived its value therefrom. It was from this coin that the valuation of the florin was made by the director of the mint, as set forth in the proclamation of the Secretary. That valuation, so long as it remains unchanged, was binding on the Collectors and on importers; just as binding as if it had been in a permanent statute, like the Statute of 1846, for example. Parties cannot be permitted to go behind the proclamation, any more than they would have been permitted to go behind the statute, for the purpose of proving, by parol or by financial quotations in gazettes, that its valuations are inaccurate. The government gets at the truth, as near as it can, and proclaims it. Importers and collectors must abide by the rule as proclaimed. It would be a constant source of confusion and uncertainty if every importer could, on every invoice, raise the question of the value of foreign moneys and coins."

The opinion then proceeds to discuss the law and regulations, and the rights of importers with regard to invoices made out in *depreciated* foreign currencies, under the special statute (Sec. 2903, Rev. Stat.) above quoted with regard to depreciated currencies. The opinion then proceeds as follows :

"In the estimation of the value of foreign moneys for the purpose of assessing duties, there must be an end to controversy somewhere. When Congress fixes the value by a general statute, parties must abide by that. When it fixes the value through the agency of official instrumentalities, devised for the purpose of making a nearer approximation to the actual state of things, they must abide by the values so ascertained. If the currency is a standard one, based on coin, the Secretary's promulgation fixes it ; if it is a depreciated currency, the parties may have the benefit of a consular certificate. To go behind these and allow the

examination by affidavits in every case would put the assessment of duties at sea. It would create utter confusion and uncertainty. If existing regulations are found to be insufficient, if they lead to inaccurate results, the only remedy is to apply to the President, through the Treasury Department, to change the regulations. * * * It is of the utmost consequence to the government, and it is on the whole, most beneficial to importers, that the value of foreign moneys should be officially ascertained, and that they should be fixed by a uniform method or rule."

Hadden v. Merritt involved a similar instance of goods invoiced in a foreign currency (Mexican dollars), which the Collector translated " in accordance with the value of such coin as estimated by the director of the mint and proclaimed by the Secretary of the Treasury " for the period covering the importation, but which the importer offered to prove had been erroneously estimated. In this instance, in the place of an attempt to show a different than the proclaimed value for the currency of the invoice by departing from the metallic substance of such currency and adopting a different *foreign* basis of measurement, the attempt was to limit comparison as required by statute between such metallic medium and United States money of account, and to insist that as the Government's comparison had been with our silver money, it was therefore illegal This contention the court rejected, and reviewing the statutes hereinbefore cited, proceeded as follows:

" The value of foreign coins, as ascertained by the estimate of the director of the mint and proclaimed by the Secretary of the Treasury, is conclusive upon custom-house officers and importers. No errors alleged to exist in the estimate, resulting from any cause, can be shown in a judicial proceeding to affect the rights of the government or individuals. There is no value, and can be none, in such coins, except as thus ascertained; and the duty of ascertaining and proclaiming their value, cast upon the Treasury Department, is the performance of an executive function requiring skill and the exercise of judgment and discretion, which precludes judicial inquiry into the correctness of the decision. * * * To permit judicial inquiry in any case is to open a matter for repeated decision, which the statute evidently intended should be annually settled by public authority."

In the case of the United States v. Klingenberg, 153 U. S., 93, the merchandise had been invoiced in Austrian florins, and these were translated by the Collector at the value duly ascertained and promulgated under the foreign currency statute of 1890, for the gold florin. The importer contended that his goods had been purchased in silver, paper or some other depreciated florin, but the ascertainment and promulgation then current had set forth gold as the actual metallic standard of Austria. No consular certificate as for a depreciated currency accompanied the invoice, nor was any produced by the importer. This court again refused to permit any departure from the proclaimed standard of valuation, saying: "The collector was not authorized to presume that the paper florin was so depreciated as to be reduced to the value of the silver florin, which under the proclamation of the Secretary of the Treasury was only referred to as the nominal standard."

And further, concerning the conclusiveness of the valuations proclaimed pursuant to law:

> "This being the proper construction to be placed upon the proclamation of July 1, 1892, we are of the opinion that the Collector's action in adopting the value of the gold florin at the estimate fixed therein was not subject to review by the Board of General Appraisers, under the principle laid down in the authorities already referred to. If the action of the Collector was conclusive, certainly the Circuit Court of the United States had jurisdiction to pronounce the decision of the Board reversing the Collector's ruling, null and void."

The court then discusses the relative jurisdiction of the General Appraisers and the Federal Courts in matters relegated to them by sections 14 and 15 of the Customs Administrative Law of 1890, and concludes upon that point thus:

> "In other words, the right of review by the Circuit Court is coextensive with the right of appeal to the Board as to all matters except the dutiable value of the imported merchandise, as to which the decision of the Board of General Appraisers is by section 13 made conclusive,"

which conclusion the court proceeds to reinforce by the citation of numerous cases wherein it is determined, conclusively as the court asserts, that upon all questions of either law or fact, affecting the rate or amount of duty assessed upon imported merchandise, and

with the sole exception of the one question of appraisement, jurisdiction lay in both the General Appraisers and the Federal Courts to review the decision of the Collector.

These four cases would seem to have settled beyond cavil, that under all the laws up to 1894, no reason could be strong enough to warrant either the Government or the importer in departing a hairsbreadth from the pure metal valuations which Congress then directed, *and still directs*, shall be estimated, proclaimed, *and followed in the exaction of duties*. Accordingly we find these cases dwelt on by the Government counsel, only as asserting the finality of what the officials do; but so to cite them is a palpable case of putting good law to bad uses, for it is manifest sophistry that because the official act *in obedience* to the mandate of the statute is final, therefore any and every official act is final. There is no fear that this court will find in the cited cases any doctrine of finality, until it first scrutinizes the official act under challenge, observes precisely what it was, and compares it with the statute, noting whether or not it is in conformity therewith.

The Meaning and Effect of the Proviso to Section 25, Act of 1894.

Since manifestly the Treasury did, in this and all the other rupee cases, order and effect an assessment based on exchange value, the case must turn on the legality of its action to said effect; and as any such action would have been a palpable violation of all the earlier laws, and equally so of the main portion of Sec. 25 itself, the attempt to support its legality must rest on the contention that the proviso appended to that section authorized precisely what the section itself prohibited. Indeed, this is substantially the ground taken by Government counsel, the force of whose brief, and its entire third and last point, is focussed on the meaning of the proviso, and whose contention that the Secretary did learn, or may have learned, that the silver in the rupee was worth 32 cents, seems hardly to invite serious consideration. There are many conclusive means of showing that the proviso had no such intent and no such effect, and we will now discuss them.

1

The place of the new provision of the law, as a proviso to Sec. 25, Act of 1894, proves that it had not the intent for which the appellants contend.

Sec. 25 was a re-enactment by Congress, of the pure metal basis of valuation for foreign coin currencies.

In view of the decisions of this court upon the system in question, as cited above, it seems beyond dispute that Congress by its act of 1894 deliberately concluded to retain the system with all that it implied in the way of a fixed and certain rule, enabling every merchant to know with what valuations he must reckon, and operating, in the long run, justly to all concerned.

And here we must point out an inaccuracy in the Government brief, in asserting that the only new feature of Sec. 25 is its proviso. Its enactment as to date of exportation is equally new, and this is important as showing the intent of Congress by this section to perfect the details of the old rule and system which it was renewing.

Such being the very clear meaning of Sec. 25, the proviso which Congress appended to it is open to two constructions, one of which, for which we contend, makes it harmonize with the body of the section, and with the whole course of the statutes as to foreign currencies, merely enabling the Secretary to carry the established system to greater perfection by very frequent and informal ascertainments of the fluctuations in bullion values, while the other, for which the Government contends, makes this proviso a doorway, through which the Secretary can depart from the whole system of pure metal values at his will, and close the door in the face of all inquiry as to what he has done and why.

It cannot be denied that on the latter construction, the proviso would be most revolutionary in its effect on the valuation of foreign currencies. There is no reasonable relation between a statute that pure metal values shall be followed, and, a proviso that unless they agree with arbitrary exchange values they need not, provided the Secretary sees fit to desert them For this is in effect to repudiate them wholly, in favor of exchange values, save where those may happen substantially to coincide.. It seems manifest that no such

radical change in the system would have been put by Congress into a proviso, and appended to such an enactment as the body of Section 25 of the Act of 1894.

The function of provisos is well settled under the decisions, and is not to revolutionize the law to which they are appended.

> "The voice of the proviso generally is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it as extending to cases not intended by the legislature to be within its purview."

American-English Encyclopædia of Law, Second Edition Statutes page 678 and cases cited in Note 19.

> "Its office is not to confer a power or as a general rule to enlarge the enactment to which it is appended, so as to operate as a substantive enactment itself." (See cases cited in Note 1, page 679). "A proviso or exception as a general rule relates only to the paragraph or distinct portion of the enactment which immediately procedes it, and is to be confined by construction to the subject matter of the section of which it is a part."

Cases cited in Note 7, page 680.

> "Where the enacting clause is general in its language and object and a proviso is afterwards introduced, the proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms."

Cases cited in Note 5, citing United States v. Dickson, 15 Peters, 141; Ryan v. Carter, 93 U. S., 83; United States v. Newhall, 91 F. R., 525; Wall v. Cox (C. C. A.), 101 F. R., 410; *in re* Mathews, 109 F. R., 614.

> "The rule that all parts of a statute are to be construed together and effect given to the whole, if possible, is to be preserved in the construction of provisos and saving clauses. Thus, a construction of a proviso which is plainly repugnant to the body of the act is to be avoided if possible."

Quoting Dollar Savings' Bank v. United States, 19 Wallace, 227, where it was held that a broad construction of the proviso being repugnant to the body of the act was inadmissible.

In Minis vs. U. S., 15 Pet., 423,
Mr. Justice STORY said (at p. 445):

> "It would be somewhat unusual to find engrafted upon "an act making special and temporary appropriation, any "provision which was to have a general or permanent appli- "cation to all future appropriations. * * * The office of "a proviso, generally, is either to except something from "the enacting clause or to restrain or qualify its generality, "or to exclude some possible ground of misinterpretation of "it," etc.

In United States vs. Dixon, 15 Pet., 141,
the same eminent authority said:

> "Where the enacting clause is general in its language and "objects, and a proviso is afterwards introduced, that pro- "viso is construed strictly, and takes no case out of the en- "acting clause which does not fall fairly within its terms."

It is submitted that the following language used by Judge COLT in the Newhall case, 91 Fed. Rep. 525, exactly expounds the sound doctrine of this matter.

"This section, until we reach the proviso, is substantially a re-enactment of the previous law. The contention of the government rests upon the proposition that the word "value" in the proviso is not limited to the value "of the pure metal," but extends to other methods of valuation never before adopted with respect to specified foreign standard coins. To adopt this construction is to hold that Congress intended to depart from the long-established rule, and to introduce a new and uncertain mode of valuation of cases coming within the terms of the proviso. The result is that the body of the section provides one way, and one way only, for estimating the value of foreign standard coins, while the proviso covers other ways in conflict with former well-settled principles. Certainly the court should not adopt such a construction, if it be at all doubtful. To hold that, where the value of the foreign coin during the quarter varies less than 10 per centum from the value proclaimed, the pure metal value is to govern, and that when it exceeds 10 per centum the Secretary of the Treasury may adopt any standard of valuation he sees fit, based upon rate of exchange, trade conditions, or financial reports, would result in the introduction of those elements of uncertainty and confusion which the law has aimed especially to

prevent. The purpose of the proviso, in our opinion, was not to change the principle in estimating the value of foreign coins, but rather to permit of a different estimate on the same principle, if it should appear at any time during the quarter that the proclaimed value was to a considerable degree at variance with the actual fact existing at the time of any given importation. While the standard of valuation should be fixed and based on intrinsic value, the whole legislation on the subject shows an effort on the part of Congress to provide speedier means for correcting the valuation when it is shown to be wrong. Until 1873 any change in the valuation of specified foreign standard coin required a special enactment. By the statute of 1873 the proclaimed estimate must be made annually. By the statute of 1890 it must be promulgated quarterly. The proviso, in section 25 of the act of 1894, was simply another step in the same direction, and was intended to permit a new estimate of valuation at any time during the quarter where there was found to be an error of at least 10 per centum. This is the natural construction and evident intent of the whole section, and is in harmony with previous legislation. The proviso must be considered in connection with the body of the section and the subject-matter to which it relates. Under a familiar principle of statutory construction, a proviso is to be strictly construed, and it "takes no case out of the enacting clause which does not fall fairly within its terms." U. S. v. Dickson, 15 Pet. 141, 165. This proviso has reference to the subject-matter treated in the body of the section, and any broad construction of the word "value," which should enlarge its scope as therein defined, would be doing violence to every sound rule of statutory construction, and is contrary to the general context of the proviso itself, taken as a whole and in connection with what precedes. It would introduce confusion and inconsistency into a statute which is otherwise plain and intelligible."

A remarkable analogy exists between the circumstances involved in the present case, as well as the Treasury contention herein, and the same features as involved in the case of

De Forrest vs Redfield, 4 Blatch. 478,

and while that case has only the authority of the circuit court, its conclusion was adopted and has ever since been incorporated in Treasury practice and regulations.

The case concerned a proviso to the Act of March 2, 1799 (1 Stats 673), whereby Congress appended to one of the earliest of the currency statutes above discussed, a power for the President to

make " proper regulations for estimating the duties " on goods invoiced " in depreciated currencies, issued and circulated under authority of any foreign government." Under the plea of this power, the President (through the Secretary) proceeded to fix an arbitrary value for certain foreign coin, not identical with its actual metal value, but upon a theory that he might choose his own basis for such valuation. But the court condemned this, saying that power to make fit and proper regulations did not enable the President to fix an arbitrary value on foreign coins. " If so, he might at his pleasure increase or diminish the rate of duties accordingly as he might happen to favor a high or low tariff or as he might think the exigencies of the occasion required, without regard to the legislative branch of the Government. If he could thereby change the intrinsic value of foreign coin $6^1/_4$ or 4 per cent he might 15 per cent. It would in effect enable him to make or remake the revenue laws, not only without consulting, but in defiance of, the House of Representatives." And the court added that the power in the proviso to make regulations implied regulations to carry out the laws relative to foreign coins, not to violate them. The matter of that early proviso afterward became Sec. 2903 Rev. Stats., which is law today, and pursuant thereto and to the doctrine of the De Forrest case, the Treasury has made Article 409 of its Regulations of 1899, as follows:

> " In the assessment of duty, the currency of the invoice must be reduced to the money of account of the United States upon the basis of the values of foreign coins as proclaimed by the Secretary of the Treasury on the first days of January, April, July, and October of each year. The date of the consular certificate will indicate the value of the invoice currency.
>
> " When the standard value of a foreign coin has not been thus proclaimed, any invoice expressed in such coin must be accompanied by a consular certificate showing its value in standard gold dollars of the United States.
>
> " When invoices are made out in a paper currency which has become depreciated the consul is instructed to certify the relative value of said currency as compared with the standard coin of the country of exportation *the latter being the only currency recognized by the law*, and entries of such invoices must be reduced at the values so certified."

2.

There was, elsewhere in the Statutes, a provision on precisely this matter of divergence between bullion and exchange values of currencies. It covered only depreciations, and the manifest way to accomplish what the petitioner thinks was intended, would have been to amend it.

Sec. 2903 of the Revised Statutes provides that

> "The President may cause to be established fit and proper regulations for estimating the duties on merchandise imported into the United States, in respect to which the original cost shall be exhibited in a depreciated currency issued and circulated under authority of any foreign government."

It is manifest that the insertion of two words into this provision, causing it to read "shall be exhibited in a depreciated or appreciated currency," would have accomplished, unequivocally, the object for which the petitioner thinks resort was had to the proviso in Section 25.

We believe the continued presence of this provision in the Statutes, and the fact that it was neither repealed nor amended in 1894, conclusively negatives the petitioner's contention. For if the new proviso was intended to provide a method for taking up divergences between bullion values and exchange values, then since it covered both upward and downward divergences, there would be one method for upward and two wholly distinct and independent methods for downward ones,—a thing unprecedented and wholly improbable;—creating exactly the "two differing methods of computing the values of foreign coin" which this Court condemned in Arthur v. Richards *(supra)*.

Again, Sec. 2903 provides for taking up *any* divergence between bullion and exchange, however slight. It does not remain inoperative, nor should it, until the depreciation reaches 10 per cent. Differences between bullion and exchange are likely to be of long

duration, and should hence be permanently provided for if at all, and the least as well as the greatest. But there is no difference in principle between depreciation and appreciation, such as should result in recognizing the latter only when it reaches 10 per cent. Yet the appellants' contention involves the assertion that Congress, which had in Sec. 2903 enacted that every depreciation might be recognized, proceeded by the proviso to Sec. 25 to enact that appreciations of 10 per cent. or more, only, might be recognized.

Interesting confirmation of this view is found in the fact that the Treasury, for a long time after 1894, deemed Section 2903 the only statute warranting departure from bullion values. Its first ruling in Newhall's case (T. D., 17107) proves this, as follows:

(17107) Value of rupee as applied to importation of tanned skins.

TREASURY DEPARTMENT, May 12/96

SIR: The Department is in receipt of your letter of the 7th instant, in which you forward an invoice of certain tanned skins consigned to J. Allston Newhall & Co. of your port, from Madras, India.

It appears that the invoice is made out in rupees; that the value of the rupee at the time of shipment and consular certification, as estimated by the Director of the Mint and proclaimed by the Secretary of the Treasury, was $0.233, but that its actual value in exchange between Madras and New York, through London, was at that date $0.285, or 23 per cent greater than said proclaimed value.

You refer to Synopses 15606 and 16037, relative to the value of the Mexican dollar current in Puerto Rico, and you request instructions as to the treatment of the importation covered by the invoice submitted, and similar importations likely to arrive in the future.

In reply, I have to state that inasmuch as the actual value of the rupee at the time of the exportation, though higher than the proclaimed value, was still considerably less than its nominal value ($0.444), the Department is of the opinion that said currency must be regarded as a depreciated currency, and you are therefore authorized to

liquidate entries of merchandise covered by invoices made out in such currency at the value certified by the counsel.

Respectfully, yours,

CHARLES S. HAMLIN,

Assistant Secretary.

Collector of Customs, Boston, Mass.

Treasury Decision 17766, dated February 3, 1897, and set out at pp. of this brief, is the first official assertion of the view that the proviso to Sec. 25 applies to currencies whose exchange is greater than their bullion value. In view of these historic facts, it is clearly fallacious to assert that the proviso was urgently desired, or needed, by the Treasury Department, in 1894, to cure a situation of grave and unfortunate daily results, under which the department was chafing. Nor is there a scintilla of evidence that the Secretary asked Congress for any enactment or relief in the premises.

3.

Analysis of the very terms of the proviso shows that the construction for which we contend, is the correct one.

These terms are grammatically and logically interlocked with those in the main body of the Section. A reading demonstrates that the two provisions concern the same matter and are conjoint in their adjustment of it. The words of the proviso : "the value of the foreign money specified in the invoice,"—"at least ten percentum more or less than the value proclaimed,"—"the Secretary may order reliquidation at a different value,"—all these relate and refer unmistakably to the words of the Section itself. The proviso becomes operative when the Secretary finds the value of a currency ten percentum more or less than the value proclaimed. Nothing could, we think, be clearer than that this means *the value proclaimed for the same thing.* Any other reading would be absurd grammatically and absurd in result,

for if it is enough that the Secretary finds exchange values differing from metal values, it is but a short step to the conception that he may order reliquidation because there is a difference between the invoice currency and some other currency not in the invoice. Unless the value must be found to vary from the proclaimed value of *the same coin or currency*, the words of the proviso nowhere tell *from what* it must be found to vary. And since it must needs be the value of the same thing, the proclaimed value being a pure metal one, the varying value must also be a pure metal one.

The petitioner attempts an analysis of these terms, which is marked by broad fallacy, such as that "value," when appearing the first time, means *relative worth*, the second time, *market value*, and a later one, *the invoice or market price*, whereas, as already pointed out at page of this brief, market price or value is fully determined and settled before any value is applied to the invoice currency at all. In fact, the word "value," wherever used in Sec. 25, means *the equivalent in our currency.*

No significance can be attached to the use of the term "foreign money" in the proviso, while "foreign coin" is used in the body of the section. While these terms are not identical, their use is in this instance clearly synonymous, for it is "foreign money" which must be found to have varied from "the value proclaimed," and the value proclaimed is to be of the "foreign coin."

On the other hand, the method to which the proviso authorizes the Secretary to resort, is, we submit, conclusive that fluctuations in pure metal value were contemplated in it. As already stated, exchange and bullion values may be permanently divergent, and in the case of the rupee, were divergent when the Act of 1894 was passed and on every quarter day for many years thereafter (Appellants' brief, pp.). To provide in such a matter, for liquidation at the bullion value, to be followed by reliquidation on orders from the Secretary whenever he learns of the divergence, would be absurd. The best possible knowledge of fluctuating *exchange* values, is of course to be had by our consuls in the ports of shipment and at the time of shipment. Hence they can certify it on the invoice and it can be followed in the first as easily as in any later liquidation ; nor is it in the least strengthened by reference to the Secretary. Had any such divergence been in view, it would unquestionably have been taken up by regulations like those under Sec. 2903. Fluctuations in bullion value, on the other hand, are

apt to be sudden and violent, as the history in Appellants' brief shows, and they are marked off or taken up, every three months, by a new promulgation of such values. For such a fugitive and occasional matter, the Secretary might reasonably be required to act specially in each instance, and being necessarily expert on bullion values and fluctuations, by reason of his frequent promulgations under the Statute, he, and not the Collectors, would naturally be designated to act. So that the entire procedure for which the proviso arranges, sounds unmistakably of bullion fluctuations, and thus harmonizes with the "fixed rule of computation" to which it is appended, and with the leaving of the entirely different system of Sec. 2903 wholly undisturbed.

All this is strongly reinforced by the clause which makes the proviso operative only when the divergence reaches 10 per cent. It would manifestly not be worth while to reliquidate for every fluctuation of bullion, these being adjusted by proclamation every three months, but fluctuations of exchange never being so adjusted, it cannot reasonably be supposed that a plan for taking them up by reliquidation would have been made dependent on their reaching or exceeding 10 per cent. Far less can we suppose that Congress would so multiply the provisions against exchange variation, that under one section of the law, a shrinkage in exchange however small could be recognized, while under the other, an advance in exchange could be recognized only when exceeding 10 per cent, and that two wholly inconsistent methods should be resorted to for such purpose.

4.

Conditions prevailing at and shortly prior to the enactment in question, compel the conclusion that bullion fluctuations, and not those of exchange, were in the minds of the law-makers.

Upon this matter of the conditions which were to be met, as throwing light on the true construction of the proviso, Government counsel direct much of their argument. Nothing will better

In decision 22747, the Secretary actually resorts to this absurdity, finding section 25 his authority for ordering reliquidation of an entry in milreis of the Azores, *because their value varied* more than 10 per cent. from the proclaimed value of the milreis of Portugal, the latter value being $1.08, while that of the Azorean milreis was $.6489.

suit the respondents than to have the question decided on this principle, for a true and full survey of these conditions shows beyond doubt that bullion fluctuations were, in 1894, the most important and most urgent matter calling for amendment of the law.

Thus, in five months of 1890, next preceding October, silver bullion rose 20 per cent. in value—a fluctuation, as Government counsel aver, unprecedented in range and violence. On October 1, Congress passed a new law, wherein no suggestion was found of a repudiation of the pure metal basis, but the ascertainment of bullion values was directed to be made quarterly, instead of annually as theretofore. There can be no possible doubt that this was the method wherein Congress met this new condition, and doubtless it was at the time expected to be sufficient.

All this is indeed conceded by the petitioner's counsel, but on the suggestion that Congress' only motive was to secure to the Treasury fuller advantage of the advancing silver values. The inference is that had silver *fallen* as rapidly, no amendment would have occurred. But we cannot believe this court will approve the view that enlargement of the revenue, and not justice as between the Government and the taxpayer, was the actuating motive, and we think that had the change been up or down, the same remedy would have been adopted.

But in 1893, and not only owing to the cessation of rupee coinage in distant India, but also because of the repeal of the silver-purchase provisions of the "Sherman Act" on November 1, 1893, here in our own country, silver fluctuated (this time downward) far more violently than in 1890. We are told that in one period of ten days it declined 18 per cent.

Were the quarterly ascertainments found adequate to note these fluctuations? No! For as shown by the Mint director's tables the rupee was declared to have on January 1, 1893, a bullion value of 29.2 cents, on April 1, of 29, on July 1, of 28.7, and on October 1, of 25.2. So that the wide fluctuation of June, 1893, *escaped substantially un-noticed in these circulars.* The variation continued right up to the passage of the Act of 1894, although with somewhat less violence. What, then, would Congress logically do to meet this condition? Discard the rule of pure metal values entirely, as involving a basis too capricious to be followed? The enactment of Sec. 25 demonstrates that they did not choose to discard it. Provide still more frequent ascertainments and promulgations? The record showed them that even one

per month would not suffice. Manifestly, then, a direction for informal proceedings, by the well-informed Secretary, who kept the bullion value tables constantly, to the end that whenever he discerned fluctuations wide enough to render the latest promulgation unserviceable, he might so advise Collectors and order reliquidation accordingly, they having meanwhile proceeded as required by law, in accordance with the quarterly ascertainment—here was the logical and ready remedy.

And the utmost ingenuity of counsel cannot contend but that the proviso, on its most natural construction, precisely embodies this remedy.

There is patent error in the argument of counsel that the fluctuation of silver was a negligible—while the divergence of exchange in the single instance of India was a vital matter. The one concerned the whole silver-coining portion of the world, and our trade relations with it; the other, the single case of India. The divergence between Indian rupee exchange and bullion values was no greater—4.4 cents—when the Act of 1894 was passed, than were the fluctuations of silver itself in periods as short as ten days. Yet on the Government theory, the proviso to Sec. 25, being devoted to the sole matter of Indian exchange, no means whatever was provided for taking up wide fluctuations of bullion value occurring between proclamations. Yet these occurring, would at that time have affected imports from China, Japan, India, Mexico, Columbia, Peru, Bolivia, Ecuador and the Central American States. Among these silver standard countries, India was relatively unimportant in her exports to this country, sending in all, $14,829,661 worth in 1894, while from China and Japan alone, the total was *circa* $40,000,000.*

Counsel suggests that Congress had no reason to expect any further violent fluctuations in silver value. Are we wrong in thinking that a certain great political party was already committed, in 1894, to the silver coinage policy on which, only two years later, it came extremely near electing its presidential candidate? Or that if he had been elected, silver would have appreciated with a suddenness casting the movement of 1893 wholly into the shade?

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* Imports and Exports of Merchandise into and from the United States, during the years ending June 30, 1890-1899.
Treasury Department, Bureau of Statistics, Nos. 7 and 8.

It is interesting to note, in the "Report of the Chief of the Bureau of Insular Affairs" for 1903 (at pp. 10-12) that in seven months in 1903, the price paid for silver for Philippine coinage ranged from 49.10 to 60.47 cents,—an appreciation of over 21 per cent in that period.

As to the argument based on the assertion that the Act of 1894 was an act "to provide revenue", and hence would not contain a provision calculated to take prompt note of diminishing silver values, lest thereby revenue should be lessened, it wholly overlooks the fact that the act was entitled "An Act To reduce taxation, to provide revenue for the Government, and for other purposes". The *reduction of taxes* was the first declared purpose of this law, and its intent was carried out, toward the products of India, to such effect as to place almost every one of them on its free list. Appellants' counsel purveys a lively picture of the Treasury's distress at the way the pure metal valuation was affecting imports from India; the daily injustice of it; the crying need of a better system in the Act of 1894. It nowhere appears that the Secretary so much as asked Congress to make the change, and it does appear that when it had been made, the Treasury did not construe it as having any such effect as is now contended, but for years thereafter, went on the theory, as already pointed out, that Sec. 2903 continued to afford the only means of taking up the fluctuations of exchange. This is shown in the following published Treasury ruling.

(15606.)

Valuation of Mexican Dollars in Puerto Rico.

TREASURY DEPARTMENT, February 8, 1895.

TO COLLECTORS AND OTHER OFFICERS OF THE CUSTOMS:

The Department has been advised by the Director of the Mint that, owing to the prohibition by the Spanish Government of further importations of Mexican dollars into Puerto Rico, the said dollars have come, by reason of the resultant scarcity in that country, to have a value greater than that of the pure silver contained therein and consequently greater than that proclaimed by the Director of the Mint. It follows, therefore, that whenever an importation of sugar from Puerto Rico is appraised at the mint value of the Mexican

dollar it is appraised too low, an unjust discrimination against sugar imported from other places resulting.

The Mexican standard dollar is the coin in circulation in Puerto Rico, and section 2 of the act of June 10, 1890, is as follows:

"That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made or if purchased in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or in quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, manufacturer, or owner."

Section 25 of the act of August 28th, 1894, provides as follows:

"That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this Act and thereafter quarterly on the first day of January, April, July, and October in each year. And the value so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed, and the date of the consular certification of any invoice shall, for the purposes of this section, be considered the date of exportation: Provided, That the Secretary of the Treasury may order the reliquidation if any entry at a different value, whenever satisfactory evidence shall be produced to him showing that the value in United States currency of the foreign money specified in the invoice was, at the date of certification was, at least ten per centum more or less than the value proclaimed during the quarter in which the consular certification occurred."

Notwithstanding the enhanced value of the Mexican dollar in Puerto Rico, such value remains below the nominal value of said coin, which may consequently be regarded as a depreciated currency and be treated under the regulations of the Department governing such currencies.

The Treasury's own promulgations, T. D. 24318, 24531, 24690, dated respectively April, July, and October 1, 1903, show appreciations of silver of over 9 per cent. and of 6⅛ per cent. respectively in the quarter years therein reported.

The Department of State has been requested to instruct the proper United States Consuls to certify the money value of the Mexican dollar as hereafter used in invoices from Puerto Rico, and offices of the Customs are hereby instructed to liquidate entries covering such invoices at the value so certified.

It is proper to remind local appraising officers that their returns of the value of imported goods must be made in the currency set forth in the respective invoices, and that the reductions of foreign currencies to the money of account of the United States in the adjustment of variations in the value of foreign moneys under the provisions of section 25, above quoted, devolved solely upon collectors of customs. Computations as to the United States value of invoice currencies are not germane to the functions of appraisers.

This intimation is promulgated because contentions have, in some recent instances, arisen from the action of appraisers in contravention of the above rule.

CHARLES S. HAMLIN,
Acting Secretary.

If the proviso had been passed to enable the Secretary to collect duties on the full exchange value of goods invoiced in rupees, can we for a moment doubt that his office would at once avail of it? Assistant Secretary Hamlin, then in office, was highly familiar with the currency aspects as with all other aspects of the duty laws, and probably drew the new provisions of Sec. 25 and its proviso. Yet we see that within a few months after the Act was passed, the first case of an inflated exchange value which occurred, was disposed of by him on the theory that Sec. 25 and its proviso did not cover it, and his office adhered to this view for nearly three years, as shown by the decision T. D. 17107, published at page of this brief, and by T. D. 17766, dated February 3, 1897 (*supra*, p.).

A still further improbability is perceived in the appellant's contention as to the fiscal effect desired with regard to Indian imports by the enactment of 1894, when we observe that practically every important subject of such import was either put on the free list, where were found hides (paragraph 505), raw skins (505), wool (685), jute (497), tin (653), gunny cloth (392½) and burlaps (424½), or else was dutiable at a specific rate, wholly unrelated to the value, as in the case of linseed, taxed at 20 cents per bushel (paragraph

206). Nothing appears to have been left dutiable by value except certain tanned skins, at 10 per cent (341), and of these India sent us in 1894 only $1,054,000, or about 6 per cent. of her total shipments.* Thus we are asked to believe that Congress in 1894 had not its attention focussed on such tremendous fluctuations of silver value as 20 percent in ten days, though wholly unprovided for in the then existing system, despite the effort to do so by the amendment of 1890, and though these convulsions were world-wide,—but did legislate with sole regard to the avoidance of inequalities in the calculation and assessment of $100,000 of duty per year on East Indian skins for morocco. In view of the fact that the most obvious reading of the proviso, and its place in and relation to the statutes, and the method it created, all refer the mind directly to bullion fluctuations, we cannot believe any such theory will meet the approval of this Court.

In fact, substantially the entire pecuniary importance of this rupee controversy has accrued under the Tariff law of 1897, whereby many Indian exports were placed in the *ad valorem* duty lists. Unless Government counsel contends that the amendments of August 1894 were made with a prevision of the duty law of 1897, the entire argument as to their importance to protect the revenue falls to the ground.

The contention that the action of the Secretary, because it followed the language of the proviso to Section 25, was final and conclusive and cannot be scrutinized even to see what it really was.

In the first section of their brief, Counsel seriously contend that *any* action by the Secretary of the Treasury, *purporting to be* in pursuance of the proviso to section 25, is final and conclusive, irrespective of the grounds on which such order is based or its fundamental legality or illegality. In support of this somewhat extraordinary doctrine counsel have cited the same decisions of the Supreme Court bearing upon the construction and effect of the valuations contained in the proclamations of value, which we have already cited and discussed.

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* "Imports and Exports of merchandise" *supra*, p. .

Judge COLT, in his opinion in the second Bebee case (117 F. R., 670, at pages 674-5-6) carefully analyzes the decisions in these four cases and reaches the following conclusion :

> " In all these cases it will be observed that the Director of the Mint, acting within the scope of the powers conferred by statute, made his estimates on the pure-metal basis. It is manifest, therefore, that the rule of conclusiveness laid down in these cases goes to this extent, and no further: Where the pure-metal values of foreign standard coins as provided by the statute have been estimated by the Director of the Mint and proclaimed by the Secretary of the treasury, such values are conclusive, and cannot be impeached by evidence of mistake or miscalculation. In other words, the pure-metal estimate by the Director of the Mint, as a fact found, is final, and the Collector's action in conformity with such finding is not subject to judicial review, either under the old law, where the importer brought suit against the Collector in the circuit court to recover the duties paid, or under the customs administrative act of 1890, where an appeal is taken from the Collector's decision to the Board of General Appraisers. Assuming the word 'value' in the proviso of section 25 to mean 'value in pure metal,' as the court has already determined, the doctrine of conclusiveness applied to reliquidations goes to this extent, and no further: The order for reliquidation of an entry by the Secretary of the Treasury upon evidence satisfactory to him, based on the required difference between the pure-metal value of the foreign money specified in the invoice and the proclaimed value, is conclusive, and the action of the Collector thereunder is not reviewable by the Board of General Appraisers or the courts."

In these cases no question was or could be made but that the Secretary had sought to proclaim the pure metal value either in terms of U. S. gold or silver dollars, of the foreign money in question. The statute was unambiguous, and it definitely declared " that the value of foreign coin as expressed in the money of account of the United States, shall be that of the pure metal of such coin of standard value."

Under this clear enactment the Supreme Court held in the cases referred to, that the valuation proclaimed *pursuant to this statute* was conclusive. It was in each case the importer who sought to avoid the conclusiveness of the proclamation, and in each he had all the reasons as to assessment on actual market values, equality between different foreign nations, etc., which petitioner can adduce in this case. But the Court said the law made the proclamations

final *against all parties*, and this includes the Secretary just as well as the importer. Now, the Secretary himself ignores the proclamation, and these cases are sought to be availed of as authority for the finality of his action. The position of counsel for the Government with respect to the proviso, we understand to be this; the word "value" in the proviso is ambiguous, being open either to the meaning claimed by the importers, viz., the value of the pure metal, or, to a broader meaning claimed by the Treasury Department—that the Secretary is not limited to ascertaining the value of the pure metal, but may use other bases of valuation inconsistent therewith. But that whatever be the true meaning of the statute, it must be conclusively presumed that the Secretary's action was pursuant to it.

On this question of construction a controversy has existed for several years between the Treasury Department and the importers, the courts in every case, when the question has been presented to them, deciding in favor of the narrow and conservative construction which they demanded. In the light of these decisions, it surely cannot be asked that this court shall refuse to scrutinize the said order and the facts leading up to it, before pronouncing it final. It is clear that all chance of such finality depends on the answer to a prior question, viz: what did the Secretary really do?

It is impossible from reading the Secretary's letter in connection with other correspondence and acts which preceded it, and *of which it formed a part*, not to reach the conclusion (which admittedly is the fact), that the alleged difference on which it purports to be based was not that of the metal in the coin. On Sept. 4th, 1897, the Secretary officially announced (T. D. 18327) that the actual exchange value of the rupee, and not the proclaimed value, would be taken as a basis for estimating duties on goods from India.

In pursuance of this policy, Collectors were directed to disregard the pure metal value of the rupee, and to take the value certified by the Consul (*i. e.* the exchange value, as expressly declared in the consular certificate).

These rulings were in force when the present shipment and entry were made, and pursuant to them, on July 11, 1900, duty was liquidated by converting the silver rupee of the invoice at this exchange value, against which liquidation the importers protested, on the ground that the proclaimed value should have been taken.

On September 26, 1900 (T. D. 22,511), the Treasury Department

instructed Collectors to disregard previous instructions of the Department *(to liquidate according to the value stated in the consular certificate)*, and in future "you will be governed solely by the value proclaimed. * * * for the quarter. * * * If such proclaimed value is *less than that shown by the consular certificate accompanying the invoices* you will report the fact immediately to this department, so that a reliquidation should one be deemed necessary may be ordered and the collection of the increased duties chargeable on such importations secured."

In other words, while adhering to its purpose of compelling importers to pay duties upon the basis of the exchange value certified by the consul, by this circular the Department announced its purpose of varying its procedure to reach that result, namely, to abandon liquidation at the exchange value in the first instance, but to reach the same result by an original liquidation at the proclaimed pure metal value and follow this up immediately by reliquidation at the exchange value certified by the consul.

On May 18, 1901 (T. D. 23,059), the Department issued its circulars to the Collectors as to all entries of merchandise in rupees made within one year prior thereto *not* liquidated at the proclaimed value, to reliquidate such entries at the proclaimed value. "Immediately thereafter (reliquidation) all the papers will be forwarded to the Department for such action as it may deem proper *in accordance with the instructions of September 26, 1900.*" (Quoted above; *i. e.*, to reliquidate at the exchange value certified by the consul.) "*No refunds are to be made pending the receipt of further instructions from the Department.*" The papers accordingly were sent to the Department by the Collector and on June 6, 1901, the Department returned them with a letter stating that satisfactory evidence had been produced to the Secretary of the Treasury showing that the value of the rupee was at the date of shipment 32 cents and directing a reliquidation accordingly.

Apparently no other evidence was produced to the Secretary beyond the statement of exchange value in the consul's certificate. Manifestly that was all the evidence the Secretary wanted, from the tenor of his letter of September 26, 1900, for the only purpose of the Secretary was by a different and roundabout procedure to restore the original liquidation of July 10, 1900, at the exchange, value and this was done. Admittedly the original liquidation was at the exchange value, and obviously the purpose of the order of June 6th, construed in the light of the decisions of the Department regarding

this very importation, and all like importations, was to restore that liquidation at the exchange value, and it did so. And while Government counsel at some parts of their brief make much of the point that we cannot properly know, but that the Secretary had satisfactory evidence of a 10 per cent. change in silver value itself, between April 1 and April 19, 1900, at other parts they repeatedly concede the resort to exchange, and notably on page 39, they assert: "*since July 1, 1893, there has not been a change of 10 per cent. in the market price of silver in any quarter year.*"

Under these circumstances no court should hold that under this statute, which counsel for the Treasury themselves claim is ambiguous, a pretended finding of fact, purposely sufficiently ambiguous by itself to include two meanings, but in fact based on an entirely erroneous construction of the law, is to be conclusively presumed to mean something absolutely and entirely different from what the Secretary meant by it. If this be true, whatever the Secretary declares he does in the name of the statute, though admittedly in violation of the statute, and unlawful, is unassailable and unimpeachable. We confidently submit that such is not the law.

Even if it be true, as counsel for the Government contend, that valuations in proclamations, irrespective upon what basis they are made, and what they purport to be, are conclusive, that is no reason for extending this power to the action of the Secretary under the proviso.

The tables of estimates contained in the quarterly proclamations, are a substitute for the statutory enactments of value which preceded them. They are the basis on which all foreign moneys are to be reduced into U. S. currency for the purpose of the assessment of customs duties. At most the proviso affords a remedy in individual cases under certain conditions. The Secretary may exercise the power when he pleases; it is special and not universal as is the case of proclamations. The proviso gives the Secretary a discretionary right which he may or may not exercise in certain given instances. If no restraint can be placed on the Secretary in acting under this power, the rights of importers are absolutely at the mercy of the will of the Secretary for the time being. He may override the general law relating to the conversion of foreign money, as he has done in this case, and substitute a valuation of his own for the one prescribed by the statute;—he may make this valuation, if he pleases, apply to some importers and not to others, permitting a favored few to pay their duties at the proclaimed value, and com-

pelling others to pay duty at the exchange or some other value recording as he desires.

"If the doctrine of conclusiveness goes to this extent, then the importer is no longer governed by the laws which Congress enacts, but by the Secretary's interpretation of them." *Opinion in Beebe's case, 117 F. R., 670.*

Counsel for the Government, under the first section of their argument, undertake to distinguish between the Beebe case and this case, on the ground that the facts in the Beebe case were stipulated, (and which stipulation is printed for the court's convenient reference, as Appendix A. hereto annexed) whereas there is no stipulation of facts in the present case. The fact is, as well known to petitioner's counsel, that after this court denied the writ of *certiorari* in Beebe's case, a plan was adopted by all counsel, to send that case again into the courts, after reliquidating the entry twice —exactly as was done here—for a decision which should be conclusive on the whole issue. And to that end the facts, *as they were in all the cases*, were solemnly stipulated in Beebe's case. We conceive that the only difference in the two records is this:—that in the Beebe case the Attorney General freely conceded what were unquestionably the facts, while in this case counsel for the Government have vainly sought to suppress facts which are abundantly self-evident, and which, stipulation being declined, have been duly and amply proven. The resort to this practice, and the choice for presentation in this court of a case differing from the great mass of the rupee claims, at present sequestrated in the Treasury Department, in several particulars upon which the Government counsel lay stress, however much or little importance we may think they have, —all these are at least curious commentaries on the assertion with which the Government brings this case here, viz.: that it is selected as one properly presenting *all the aspects* of this controversy, and one on which the Supreme Court should, therefore, be asked to express its judgment.

Fortunately for the ends of Justice, the fact, as already stated, was self-evident; it was set forth in the published official proceedings, lasting through years in all of these cases, and emanating from the Secretary's own office; it was unmistakably demonstrated by publications of the same office, not intended to affect these cases, but officially denying those fluctuations in silver values, upon the sorry pretense of which,—the bare assertion that they *might* have

occurred, for all their admissions to the contrary,—the petitioner's counsel are compelled to stand.

In a word, then, the question propounded above must be answered, as absolutely proved and conceded,—the Secretary repudiated the pure metal value of the rupee and ordered it to be reckoned at its exchange value. That order can surely be reviewed and measured by the true meaning of the statute, and if not warranted hereby, will surely be condemned.

The general law with reference to the legal effect of the acts of an official, entirely supports the claim that the Secretary's action is reviewable.

One of the latest cases on this subject is:

American School of Magnetic Healing vs. McAnnulty, 187 U. S., 94.

That case arose under Section 3929 of the Revised Statutes, which reads as follows:

> The Postmaster General may, *upon evidence satisfactory to him* that any person is engaged in conducting any fraudulent lottery, gift, enterprise, or scheme for the distribution of money, etc. * * * instruct postmasters at any post-office at which registered letters arrive directed to any such person to return all such registered letters to the postmasters at the offices at which they were originally mailed. * * *"

The plaintiff conducted by correspondence the business of teaching the science of healing human ills. The Postmaster General decided that the business was a fraudulent one, and directed the postmasters to withhold mail matter sent to the plaintiff through the mail. The plaintiff then brought a bill in equity alleging these facts and that the business was a legal and legitimate one. The defendant demurred to the bill on the ground that the court had no jurisdiction because the statute gave to the Secretary alone jurisdiction to decide whether the act was fraudulent. The court overruled the demurrer in an able and instructive opinion by Mr. Justice PECKHAM, in the course of which (p. 108) he answers the argument of counsel for the Postmaster General, which is identically the argument of Government counsel in this case.

> "That the conduct of the Post Office is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."

And in the concluding sentence the court says, "In overruling the demurrer we do not mean to preclude the defendant from showing on the trial, if he can, that the business of complainant *as in fact conducted* amounts to a violation of the statutes as herein construed" (Opinion, p. 111). We confidently submit that this decision is an absolute and complete reply to everything that can be said in favor of the lack of jurisdiction of the Board of Appraisers to set aside the reliquidation in this case.

So it has repeatedly been held that the actions of customs appraisers are conclusive only when their proceedings are according to law. In

Robertson v. Frank Brothers, 132 U. S., 17–24,

the Court said:

> "But it is contended that the act of the appraiser in making, or requiring to be made, the additional charges for transportation and labor was final and conclusive, and cannot be made the subject of inquiry. It is undoubtedly the general rule that the valuation of merchandise made by the appraiser, unappealed from to merchant appraisers, is conclusive. But whilst this is the general rule, it is subject to the qualification that if the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable. This qualification applies to the acts of many other officials charged with duties of a similar character."

In

U. S. v. Passavant, 169 U. S., 16–21.

> "While the general rule is that the valuation is conclusive upon all parties, nevertheless the appraisement is subject to

be impeached where the appraiser or collector has proceeded on a wrong principle contrary to law or has transcended the powers conferred by statute" (169 U. S. 16, 21).

See, to same effect,
Muser v. Magone, 155 U. S. 240–247.

So with reference to officers of the Land Department.
Shepley v. Cowan, 91 U. S. 330–340.

Wherein Mr. Justice FIELD pointed out that if these officials "err in the construction of the law applicable to any case, * * * their rulings may be reviewed and annulled by the courts * * * but for mere errors of judgment upon the weight of evidence in a contested case before them the only remedy is by appeal from one officer to another of the department."

So as to the Secretary of the Treasury.

Morrill v. Jones, 106 U. S., 466:

"The Secretary of the Treasury cannot by his regulations alter or amend a revenue law. All he can do is to regulate the mode of carrying into effect what Congress has enacted. In the present case we are entirely satisfied the regulation acted on by the Collector was in excess of the power of the Secretary. The statute clearly includes animals of all classes. The regulation seeks to confine its operation to animals of 'superior stock.' This is manifestly an attempt to put in the body of the statute a limitation which Congress did not think it necessary to prescribe."

It is noteworthy that in this case also, there existed the feature of an order (regulation) by the Secretary, on which the Collector acted ministerially only. Yet this interposed no obstacle to the Supreme Court sustaining the tax payer's protest against the Collector's action on such regulation.

And see
Merritt v. Welsh, 104 U. S. 694.
American Sugar Ref. Co. vs. U. S., 181 U. S. 610.
Downs vs. U. S., 187 U. S. 496.

Executive officials have a dangerous tendency to assume power and to exceed their powers. Congress has not favored it, and the courts have repeatedly corrected and rebuked it.

Christy vs. Unwin, 3 Per. Dav., 208.
Galpin vs. Page, 18 Wall., 350.
Marriott vs. Brune, 9 How., 634.
Greeley vs. Thompson, 10 How., 225.

No principal is more cherished by this court, or more clearly and oft asserted in the above cases, than that the evidence on which men are taxed, or their rights restricted, must be reviewable in the tribunals of law.

The history of the present issue shows forcibly the need of such safeguards, and that the Treasury officials, doubtless in the utmost good faith, and believing their acts meritorious and within the statute, have repeatedly exceeded their powers duly conferred by law. Thus:

A. The Mint Director, empowered by Congress merely to ascertain the metal values of foreign moneys, went wholly beyond his power when, in the foot-note to his table of metal values, he suggested the ignoring of these, which Congress had ordered should be followed.

B. The Secretary of the Treasury transcended his powers when, by the circulars above quoted, he ordered that all duties on Indian goods be calculated according to exchange values as certified by our consuls. Be it remembered that at first he did not even trouble to "order reliquidation," but asserted that the proviso to section 25 warranted an order given prospectively, as to all entries.

C. The Secretary again transcended his powers when (Treas. Decn. 17766) he ordered that protests against such exactions should not be submitted to the General Appraisers, as section 14 of the act of June, 1890, directs that they shall, but should be forwarded to him.

D. Again he exceeded his power when (Treas Decn. 18110) he proceeded to decide such protests adversely, against the specific provision of the same law, that the General Appraisers shall decide them.

Pursuant to this surprising policy, the petitioner asks this court to perceive error in the many rulings already made upon this issue, because they scrutinized the Secretary's actions, and thereupon found them illegal. Is an official who has made this record, a proper depositary of the vast power of deciding when the conditions warrant him in repudiating the standard of value adopted

by Congress, and adopting such other as he sees fit? And that, without any right of review?

Greely v. Thompson, 10 How., 225 (234),

in reference to the orders of the Secretary, therein held to be binding on Collectors, is pertinent upon this point:

> "Such action must be deemed valid or not as to third persons, according as the Collector possessed legal power to make it on the facts of the case. The orders as well as the opinions of the head of the Treasury Department, expressed in either letters or circulars, are entitled to much respect, and will always be duly weighed by this court; but it is the laws which are to govern rather than their opinions of them, and importers, in cases of doubt, are entitled to have their rights settled by the judicial expositions of those laws rather than by the views of the department; and though, as between custom house officers and the department the latter must by law control the course of proceeding, yet as between them and the importer it is well settled that the legality of all their doings may be revised in the judicial tribunals."

What Power, if any, had the Secretary of the Treasury to Repudiate the duly Ascertained and Proclaimed Pure Metal Value of the Rupee, Outside the Terms of the Proviso to Section 25?

A large part of the brief of Government counsel is occupied with a seeming assertion of some general power of this sort, and with the elaboration of alleged equities, grounds of international law and treaty, and similar supporting propositions as warranting the exercise of it.

It is safe to assert that if any such power exists in the Secretary, it must have been conveyed to him by some distinct enactment of Congress. None of our executive officers is the custodian of the rights of foreign nations under their treaties with us, and no broad power for the enforcement of such rights or of general equities can for a moment be conceded to these officials, nor indeed any whatever, such as cannot be traced to and identified with a distinct enacting source. "The acts of all its officers", said this court in the McAnnulty case *(supra)*, "must be justified by some law."

It is asserted on page 28 of the Government brief, that the

Secretary of the Treasury has an undoubted right to correct, within one year of the entry, any error committed in liquidation. No statute is cited in support of this assertion, but a reference is made to certain language found in the decision of this court in Hadden v. Merritt *(supra)*. It would be an astonishing theory, to base upon this language the conclusion that this court deems the Secretary's office endowed with unbridled power in matters pertaining to the operation of the customs laws as to foreign currencies, and wholly divorced from any need of distinct statutory authority. The language in question having asserted that the only remedy for those dissatisfied with the operation of the statutory currency proclamations, confided to the Secretary by law, was to appeal to the Department itself, is it not the manifest, as well as the only safe interpretation of this language, to hold that it suggested steps to be taken in the Secretary's office with a view to the correcting of the next ensuing statutory proclamation? that the Secretary be urged when next he had the right to act, that he so act as to correct the wrong?

Sec. 21 of the Act of June 22, 1874, cited elsewhere by Government counsel as though it were a law endowing the Secretary with power, gives him no right whatever to order reliquidations within one year from the date of entry, but is a statute of rest, prescribing limitations to the time within which he must exercise powers found elsewhere in the laws (U. S. v. Leng, 18 Fed. Rep. 15). The patent fallacy of the petitioner's argument is in supposing that in reliquidations within one year, the Secretary is any more freed from obedience to the laws than in the first liquidation. It is certain that there is no such freedom, but that the second, or tenth liquidation, however legal as to timeliness, is as subject to challenge for violating other terms of the law, as is the first. If the specific terms of our laws as to foreign currency values, as they stood in April or June 1900 or in June 1901, warranted the assessment herein complained of, then it did not need any general power of the Secretary to support its legality. But if they were violated by it, no such general power exists in the Secretary as could validate his and the Collector's illegal act in overriding them.

While, as pointed out, no power is conferred by the Act of 1874, one broad power is confided in the Secretary of the Treasury by statute with regard to the customs laws. We refer to Section 251 of the Revised Statutes, originating as the Act of Feb. 10, 1820, and which authorizes him to prescribe

"rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the Internal Revenue Laws, or for carrying out the provisions of law relating to raising revenue from imports or to duties on imports, or to warehousing."

From this it appears that in the only law whereby Congress has ever confided the necessary authority to the Secretary for enforcing the customs laws, it saw fit to confide it subject to the express conditions that it should be exercised in a way *not inconsistent with law*. Can it, in the face of this language, be reasonably contended that this official possesses an unlimited power to accomplish what he may deem justice as between importers from different countries, or between such importers and our Government, in defiance of the express letter or the clear intent of the customs laws?

Again, such power as the Secretary now has under this provision of the statute--and we deny that he has any other—he has had ever since 1820. It was his at all the times when the currency cases, and all the other important cases on official prerogative, came before and were passed upon by this court. Yet, throughout the decisions in all those currency cases, nothing was more clear or more forcibly asserted than that the proclaimed values were binding and conclusive on *all parties*, and as the Secretary of the Treasury is indisputably a party to every collection of duty for the uses of the Government, these decisions clearly assert the controlling force of the statutory proclamations upon him. This court is now asked to hold that at all those times the said proclamations were binding upon the importers only, while the Secretary was always at liberty to reject them, provided it were contended (and it always could be contended) that the proclaimed values accomplished unequal or inequitable results, or involved error or mistake.

And in all the other Treasury prerogative cases, the same resort to some vague, general alleged power was equally in order, and was repeatedly made by counsel in argument, and the statute of 1820 just as well lent itself to them as to this case. But this court has steadfastly and consistently enforced the rule of *no power save by statute, and no statutory power freed from statutory limitations.*

In

Merritt v. Welsh, 104 U. S. 649,

was concerned a typical case of this sort.

The tariff statute of 1875 (18 Stats., 339), provided various

duties on sugar according to its quality by "Dutch standard of color," and provisos imported from other acts, distinctly referred to the Secretary of the Treasury the selection of standards by which the color and grades of sugar were to be determined. Under this statute duties were charged on certain sugars, under general instructions from the Treasury Department, at rates wholly other than those to which they would have been referred by the Dutch standard, and the Government contended that this was warrantable, because the sugars had been artificially colored so as to reduce them, according to the Dutch standard, below the grade to which they belonged according to the amount of crystallized sugar which they contained, as shown by chemical test by the polariscope.

This court sustained the importers' protest against this, holding that it was the right of merchants so to adjust their goods and their transactions therein as to make them meet the terms of the law upon the most favorable basis. The Court added:

> "If the duties are affected there is a plain remedy. Congress can always adopt such laws and regulations as it may deem expedient for protecting the interest of the Government. If in the case under consideration a color standard is insufficient a different one is ready to hand: that of the polariscope or other chemical test. If the quantity of saccharine matter in sugar, or its state of advancement from the raw state to a condition of refinement, is desirable as a dutiable standard let it be so declared by the laws, and then the merchant will know on what he has to depend. Uncertainty and ambiguity are the bane of commerce. Discretion in a customs officer should be limited as strictly as possible. It has been said with much truth 'where law ends tyranny begins. * * * If experience shows that Congress acted under a mistaken impression that does not authorize the Treasury Department or the courts to take the part of legislative guardians, and, by construction, to make new laws which they imagine Congress would have made had it been properly informed, but which Congress itself, on being properly informed, has not, as yet, seen fit to make. * * * A better remedy than that of making a forced construction of the law is in the power of Congress. All that has to be done is, to change the law so as to reach the goods in their new form, if it is thought desirable to do so. If the law is found defective, let it be altered so as to attain the result desired."

In the last Beebe case, the Circuit Court touched upon this point as follows:

> "The Secretary of the Treasury, the Collector of Customs, the Commissioner of Patents, the officers of the Land Department, and all officers of the Government charged with official duties must proceed according to law. Within the scope of their statutory power their acts may be final and conclusive, but acts which are based upon a wrong construction of the statute or which proceed from following a wrong principle, contrary to law, or which flow from an assumption of authority or jurisdiction not conferred by statute, have never been held to be conclusive and unimpeachable."

Again, we are told that the constant policy of all tariff legislation has been to secure the assessment of duty on the true foreign market values of imports. In answer we assert that if this has been the policy of our legislation, it has always been subordinated or modified to exactly such extent as is represented by the specific and mandatory enactments of the "fixed rule of computation" for the values of foreign currencies, of which, as already pointed out, the first was a part of the very section, in the duty law of 1789, wherein the foreign market value system was also created. So that in 1789 it was enacted, and has ever since been the law, that appraisement, in the foreign currency, should proceed on the foreign market value, but that translation of the foreign currency should proceed according to its pure metal value in terms of our own. Neither on the statutes nor in the decisions of this court can be found any support for the contention that because the true foreign market value of imports was enlarged or diminished by adherence to the valuations of foreign currencies as enacted by Congress, or later as proclaimed by the officials in pursuance of the carefully restricted delegation of power by Congress, therefore were those valuations open to be discarded as illegal or inequitable. On the contrary, the decisions of this court in the currency cases repeatedly and forcibly point out that the "fixed rule of computation" was binding on all parties, that it was just and equitable in the long run, and that it was far more important to the Government and to merchants, to know upon what basis they were to depend for the valuation of the invoice currencies, than that either should be subjected to the "fictitious par of exchange maintained by bankers", or to any capri-

cious and fluctuating practice such as would put the reckoning of duties at sea.

We are surprised at the contention, raised in the Government brief, that even if Section 25, and its proviso, gave the Secretary no such power as he purported to exercise in the valuation of the respondents' rupees, yet the condition of the Indian currency laws at the period of this exportation was such as to warrant him in repudiating his own solemn proclamation, made strictly pursuant to law and covering the period in question. Aside from the absolute absence of proof to support the allegations on this point—which we will discuss presently,—is it not intolerable that the Government counsel should discover and should press upon this court, nearly five years after the transactions in question, alleged circumstances as tending to validate those transactions, absolutely other than and foreign to those which the Secretary then had in view?

The Secretary rested his right to make the liquidation order in question on Section 25 and its proviso. He claimed no right to do this by virtue of any other powers expressed or inherent.

We respectfully submit that the Secretary cannot now, at this time, defend the legality of his action on grounds other than he himself put it on in making the order.

But of this alleged new ground for the Secretary's emancipation from pure metal values, viz., that in true fact the standard of India's currency was not silver, nor the rupee, at the time of this exportation, but was gold and the sovereign, the whole record does not contain one scintilla of evidence. As heretofore pointed out, we deem it surprising that this point should be raised,—applicable as it is to only a small proportion of the pending rupee claims,—in this case which the Government has selected *as raising all the issues.* But passing that, and passing also the surprising objections made throughout this case to the introduction of duly produced and legal evidence by the importers, we cannot think that this court will give its approval to the *mere allegation* by the Government counsel that the condition of the Indian currency laws in the year 1900 was such as to show the Mint Director's ascertainments and the Secretary's proclamations in the early part of that year to have been erroneous. Government counsel stoutly maintain that these official documents are final and conclusive against all parties, and must necessarily hold that even upon the due production and acceptance of conclusive proofs of their being erroneous, it is outside the power of the courts to pronounce them so. Do they conceive that it is consist-

ent with this attitude, to propose that this court shall find the official pronouncements to have been erroneous *without the production of any evidence whatever to that end?* The law of India, we submit, is a fact which is to be proved like other facts in the case, and in this case there has not been the slightest attempt to prove it. This, it seems to us, is of a piece with the conception that the official action of the Secretary in 1900 and 1901, then taken by him upon one distinctly announced ground of alleged law, can four years afterwards be validated upon another ground which the Secretary never thought of.

But passing beyond all these considerations once more, and alleging, for the sake of argument, our understanding of the Indian currency Act of 1899, we believe it will be found to have no further effect upon the legal tender situation in that country, than to recognize gold as one such legal tender, and not in the least to repudiate or dethrone silver as another. Nothing in it affects the silver rupee as one of the "standard coins in circulation of the various nations of the world." The statute in question merely enables a man having a sovereign to pay a debt of 15 rupees; it does not enable a man who has 15 rupees to discharge an obligation amounting to one sovereign. Therefore it does not raise the value of the rupee to one-fifteenth that of the sovereign, any more than the present condition of our own currency Acts raises or alters the intrinsic value of our silver dollar so as to make it equal to that of the gold dollar. A fictitious appearance of value may by such a law be given to a metallic currency, strictly comparable to the "fictitious par of exchange" referred to in the case of Arthur v. Richards *(supra)*, but when we come to contemplate the "value of the pure metal contained" in such currency, measured as this must be in the broad international bullion market of the world, we find it as the Mint Director and the Secretary duly and properly found it, wholly unaffected by the fiction of law. We have carefully examined appendices G, H, I and J of the Government brief, purporting to quote the relevant parts of the Indian Acts, and we confidently assert that they leave silver and the rupee wholly untouched as the standards of India. Indeed, the Government counsel seems to perceive this, for their statement at pp. 28–29 is that rupees have not, since 1899, "in *any proper sense* been *such* standard coins in circulation" as to warrant the promulgation of April 1, 1900.

Another conclusive answer to the contention of distinguished counsel that India was on a gold standard on April 19, 1900, is the

proclamation of July 1st, 1900, in which again the Director of the Mint and the Secretary of the Treasury declared India to be on a silver standard, and the silver rupee its principal coin. Can it be that an importer when purchasing his goods cannot rely on the solemn proclamation of the Secretary of the Treasury for the quarter in question that India is on a silver standard, but must take into consideration the possibility that the Secretary may change his mind, and when the goods arrive decide that for six months India has been upon a gold standard? Or, in other words, as is the case here, was India for over a year after the passage of the act of 1899 until the proclamation of October, 1900, upon a silver standard for the purpose of making the original liquidations, but upon a gold standard for the purpose of reliquidation? In this muddle, with the Secretary setting up one standard in one breath and taking it back the next, how can any importer tell when he purchases his merchandise what the duties are going to be.

Since the silver rupee remained, in April and in July, 1900, a standard coin in circulation, there was evidently no error made in proclaiming its pure metal value. And, indeed, it would seem to involve treating these solemn official proclamations with surprising flippancy, made as they were not merely by authority of Congress but pursuant to its mandate, and put forth as such to inform the business world what reckoning would be applied to their rupee invoices—to assert that they could be rescinded six or nine months later in behalf of better information or a newly adopted official view.

But it seems unwarrantable to prolong discussion upon this matter of the alleged Indian coinage law of 1899. This court is wholly without judicial means of knowledge that any such law was enacted; much less, as to its precise contents, if enacted, or its bearing upon this controversy, if any. And as under its own repeated decisions the court would unquestionably hold, even were such law duly proven into the present record, and even were it then found flatly contradictory to the ascertainment and proclamation of April 1st, 1900, that neither the Secretary nor the importer could legally impeach such ascertainment and proclamation by means of it, it is manifestly wholly immaterial to debate the matter.

It is respectfully submitted that the decision of the Circuit Court of Appeals for the fourth circuit was correct, and should be affirmed.

ALBERT COMSTOCK,
WILLIAM R. SEARS,
Counsel for Respondents.

ALDIS B. BROWNE,
HOWARD T. WALDEN,
PAGE, MCCUTCHEON, HARDING & KNIGHT
of Counsel

Sections 2366, 3474, 3576, Revised Statutes, provide that foreign coins shall be accepted *in payment for public lands* at the values proclaimed under section 25 and its predecessors

APPENDIX A.

UNITED STATES OF AMERICA,
District of Massachusetts. } ss.

BEFORE THE BOARD OF GENERAL APPRAISERS.

LUCIUS BEEBE & SONS,
Importers

vs.

THE UNITED STATES OF AMERICA.

It is hereby agreed by and between the United States of America, by Henry M. Hoyt, Assistant Attorney General, its attorney and said Lucius Beebe and Sons, that the following propositions of fact may be taken as true ;

I.

The importation in this case consists of twenty-seven bales of tanned skins, shipped to Boston, Massachusetts, from Madras, India.

II.

Said merchandise was included in two invoices, one dated August 11, 1898, for thirteen bales of skins, and bearing Consular number 1610, and the second invoice for fourteen bales of skins, dated August 31, 1898, and bearing Consular number 1611, and showing a total value for said twenty-seven bales of skins, together with certain non-dutiable charges, as follows ;

Rupees ; 18.338/5/2.

III.

Said goods were entered in the port of Boston for consumption, on the 18th. day of October, 1898, by Julius Beebe, Marcus Beebe and Decius Beebe, co-partners, doing business in said Boston, under the name and style of Lucius Beebe & Sons.

IV.

After deducting from the invoice value the sum of rupees, 628/5/9, for non-dutiable charges, the entry value is made out as follows;

In rupees, 17,709/15/5.

V.

The invoice dated Madras, August 11, 1898, bears the following certificate of A. H. Deane, Acting Consular Agent of the United States at Madras, India, dated the 11th. day of August, 1898:

"I further certify that the exchange value of the rupee, in "which currency the annexed invoice of merchandise is made out, "is at this rate 32.11 cents, stated in United States gold dollars."

VI.

The invoice dated Madras, 31st. of August, 1898, contains a similar certificate by the same consular agent, dated the 1st. day of September, 1898.

VII.

The Secretary of the Treasury issued a circular, the material parts of which are as follows:—

"VALUE OF FOREIGN COINS.

"1898.

"Department Circular No. 124.

"Treasury Department, Bureau of the Mint,

WASHINGTON, D. C., July 1, 1898.

"HON. LYMAN J. GAGE,
Secretary of the Treasury;

"SIR; In pursuance of the provisions of section 25 of the Act of "August 28, 1894, I present in the following table an estimate of "the values of the standard coins of the nations of the world.

"Country.	Standard.	Mon. Unit.	Value in terms of U. S. gold dollar.	Coins.
India	Silver	Rupee	.199	Gold Mohur ($7.105) Silver: rupee and divisions

* * * * * * *

Appended to the estimates is the following foot-note:

"Value of the rupee to be determined by consular certificate.

"Respectfully yours,
"B. F. BUTLER,
"Acting Director of the Mint.

"TREASURY DEPARTMENT,
"Office of the Secretary,

"WASHINGTON, D. C., July 1, 1898.

"The foregoing estimate by the Director of the Mint, of the "value of foreign coins, I hereby proclaim to be the values of such "coins in terms of the money of account of the United States, to be "followed in estimating the value of all foreign merchandise ex-"ported to the United States on or after July 1, 1898, expressed in "any of such metallic currencies.

"L. J. GAGE,
"Secretary of the Treasury."

VIII.

On February 17, 1899, the Collector at the port of Boston, acting under instructions from the Secretary of the Treasury, liquidated the duty on said goods by converting into United States gold dollars the rupees of said invoices, at the rate of 32.11 cents for each rupee.

IX.

As liquidated in accordance with paragraph VIII, the total amount of the duty payable on said goods was $568.70.

X.

The importers having duly paid the amount of duties assessed by said liquidation of February 7, 1899, within ten days thereafter filed with the Collector at the port of Boston the following notice in writing, seasonably protesting against said liquidation :

" Received Feb. 17, 1899, Auditor's Office, Custom House,
" Boston.

" Boston, Feb. 17, 1899.

" Sir ;—We hereby respectfully protest against your assessment
" and liquidation of duties upon the tanned goat skins in 27 bales,
" marked various marks, imported by us in the ' Columbian ' from
" London, and entered for consumption on the eighteenth day of
" October, 1898, because you have assessed the *ad valorem* duty
" provided by law upon this merchandise, upon a value in United
" States currency arrived at by you by converting the silver rupee
" of the invoice, such being the standard coin currency of the coun-
" try of exportation, at a rate of value other and more than that esti-
" mated and determined by the Director of the United States Mint,
" and promulgated by the Secretary of the Treasury, as the value
" to be used in estimating the value of all foreign merchandise ex-
" ported to the United States at the time this merchandise was ex-
" ported, which action we contend was and is without any author-
" ity of law. On the contrary, under the laws of the United States
" applicable, we contend that the true and lawful value at which
" these rupees should have been converted to American money for

" the purpose of assessment of an *ad valorem* rate of duty upon
" this imported merchandise was that estimated and determined
" by the Director of the United States Mint; and promul-
" gated by the Secretary of the Treasury of the United States,
" for the quarter of the year within which these goods were ex-
" ported from the foreign country.

" We *submit under compulsion*, and, under the provisions of
" Sect. 25, Act of Aug. 28, 1894, claim to have all excessive duties
" paid refunded.

" No. of Entry.	Manifest No.	Bond No.	Date of Liquidation.
20,215.	2053		Feb. 17, 1899.

" Yours very respectfully,
LUCIUS BEEBE & SONS,
" WILLIAM CURTIS, Attorney."

XI.

The Assistant Secretary of the Treasury wrote the following letter to the Collector of Customs, Boston, Massachusetts;

" TREASURY DEPARTMENT,
" OFFICE OF THE SECRETARY,
" WASHINGTON, D. C., March 31, 1899.

" COLLECTOR OF CUSTOMS, BOSTON, MASS.

" SIR;—The Department is in receipt of your letter of the 20th.
" ultimo, transmitting the following described protest against your
" action in estimating the value of the India rupee in certain impor-
" tations from Madras, India, on the basis of the values shown in
" the U. S. Consular certificates attached to the invoices;

" Protest 111, of Messrs. Lucius Beebe & Sons, dated Boston,
" Feb. 17, 1899, importation 27 bales of tanned goat skins per
" 'Columbian', Oct. 18, 1898; entry liquidated Feb. 17, 1899.

" You submit the invoices Nos. 1610 and 1611, dated Madras,
" India, Aug. 11th. and September 1, 1898, respectively, for the
" inspection of the Department, and call attention to the fact that
" the United States Consular certificates attached thereto state
" that the exchange value of the rupee, in which currency the said
" invoices are made out, was, at the date of shipment, 32.11 cents,
" estimated in the U. S. gold dollars, and that inasmuch as said
" valuation, is more than ten per centum greater than the value of
" the India rupee as estimated by the Director of the Mint for the
" quarter covering said shipment, you have, following Department's
" ruling, Synopses 17,766 and 18,110, assessed duties on the basis
" of the valuation of the India rupee as certified by the U. S. Consul
" on said invoices.

" In reply I have to inform you that from an inspection of the " invoices, and of the U. S. Consular certificates attached thereto, " the Department is satisfied that the correct and true value of the " India rupee was, at the date of shipment of the said merchandise, " in fact more than ten per centum greater than that estimated by " the Director of the Mint for the quarter covering said shipments. " Your action in liquidating the entry on the basis of this higher " valuation for the India rupee is therefore hereby approved under " the authority conferred upon the Secretary of the Treasury by " section 25 of the Act of August 28, 1894.

" On behalf of the importers in this case, it has been " requested that the said protest, together with the accompany- " ing invoices, be returned to you with instructions to trans- " mit the same to the Board of General Appraisers for decision " under Section 14 of the Act of June 10, 1890, in order that an " early opportunity may be afforded to carry the question involved " into the United States courts, for decision. The Department has " acceded to this request, without, however, receding from the " views expressed in S. 17766, to the effect that the Board of Gen- " eral Appraisers is without jurisdiction in the matter.

" For the purposes stated the protest and invoices referred to " are herewith returned, and you are hereby directed to forward " the said protest # 111, with accompanying invoices, to the Board, " at your early convenience.

" Respectfully yours,

" O. L. SPAULDING,

" Assistant Secretary."

XII.

Thereafter, on the day of in pursuance of a judgment of the United States Circuit Court of Appeals, for the First Circuit, entered January 16, 1901, said Collector of the Port of Boston properly liquidated the amount of duties payable under said entry at the value of .199 cents for each rupee, as proclaimed in the Circular set forth in paragraph VII of this Agreement, the Treasury Department and the Collector proceeding as though no liquidation had theretofore been made, but failed to refund to the importers, Lucius Beebe & Sons, the excess of duty thereunder, for the reasons set forth in the following paragraph. The amount of duty thus assessed by said liquidation of the day of was $352.40.

XIII.

On the day of the Secretary of the Treasury wrote to the Collector at the port of Boston the following letter—

"TREASURY DEPARTMENT,
"Office of the Secretary,
"WASHINGTON.

"THE COLLECTOR OF CUSTOMS,
"Boston, Massachusetts.

"SIR:—The Department is in receipt of your letter of the " inclosing entry No. 20215 and invoices Nos. 1610 " and 1611, in the matter of certain merchandise imported by " Lucius Beebe & Sons at your port, invoiced in rupees, in " which you state that the entry has been liquidated on the basis " of the value of the rupee of India as proclaimed by the Secretary " of the Treasury for the quarter covering the shipment, viz.: 19.9 " cents.

"In this regard I have to inform you that satisfactory evidence " has been produced to the Secretary of the Treasury showing that " the value in the United States currency of the foreign money of " the invoice, namely, the rupee of India, was 32.11 cents at the " dates of certification, which is ten per centum more than the " value proclaimed during the quarter in which the consular certifi- " cation occurred.

"In view of the fact stated, you are hereby directed to reliqui- " date the entry hereinbefore mentioned on the basis of this latter " value, under the authority conferred upon the Secretary of the " Treasury by the proviso to section 25 of the act of August 28, 1894.

"The entry and other papers submitted are herewith returned.

"Respectfully,
"Assistant Secretary."

XIV.

The order for reliquidation set forth in the letter in the preceding paragraph was not based upon any difference between the pure metal value of the Indian rupee on August 11, 1898, and September 1, 1898, the dates respectively of consular certification of said invoices, and the value for said rupees of India contained in the Secretary of the Treasury's proclamation of value for the quarter commencing July 1, 1898, the quarter in which these exportations occurred; and the pure metal value of said rupees in terms of United States gold dollars on each of said dates of consu-

lar certification was substantially 19.9 cents, being the value thereof contained in said proclamation. And the value of 32.11 cents for the rupees of said invoices set forth in the letter in paragraph XIII was not intended to be the pure metal value of such rupees on said dates of certification.

XV.

In accordance with said letter, dated on the day of said Collector liquidated the duty on said goods by taking the rupees of said invoice at the value of 32.11 cents. The amount of duty thus assessed was $568.70.

XVI.

On the day of 1901 said Lucius Beebe & Sons, duly and seasonably filed with the Collector of the port of Boston the following notice in writing protesting against said reliquidation.

XVII.

The difference between the amount of duty payable under the original liquidation of February 17th. 1899, as approved by the letter of the Secretary of the Treasury of March 31, 1899, and the amount claimed to be due by the importers in their original protest dated February 17, 1899, and assessed under the liquidation of has not been repaid by the Collector, but is in the hands of the United States being also the difference between the amount of duty payable under the said liquidation of and the re-liquidation, dated Neither the Government nor the importers intend by the language of this paragraph, or the preceding paragraphs of this agreement, respecting liquidation and reliquidation, to make any agreement as to the legal effect of these successive steps.

XVIII.

The goods imported in this case are dutiable at the rate of ten per cent of their dutiable value, but no question is raised but that

the invoice sets forth correctly in rupees the dutiable value of said goods.

XIX.

The importers herein paid in India for the merchandise imported the purchase price of the same in rupees, and each rupee actually cost the said importers the sum of 32.11 cents through exchange purchased at the said City of Boston, but the importers contend that these facts are not material.

XX.

The rupee referred to herein, and in the invoices, being also the rupee named in the Quarterly Treasury Proclamations of value, is a silver coin, and is current in India as such. In addition to its currency as a coin, it is the usual money of account in commercial transactions in India.

Either side is at liberty to cite in argument the "India Coinage and Paper Currency Act" of September 15, 1899, and any other India coinage or currency act, and the Court may take judicial notice thereof, so far as the Court may deem the same material.

The protest referred to in paragraph XVI and the various dates admitted are to be supplied hereafter.

Executed by and on behalf of both parties at Washington, this 20th. day of July, 1901.

THE UNITED STATES OF AMERICA,
by

Assistant Attorney General.
LUCIUS BEEBE & SONS,
by

FILE COPY.

Office Supreme Court U.
FILED
NOV 16 1904
JAMES H. McKENNEY,
Clerk

413

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

UNITED STATES, PETITIONER,

v.

MORRIS WHITRIDGE ET AL.

BRIEF ON BEHALF OF LUCIUS BEEBE & SONS AND OTHER BOSTON IMPORTERS HAVING INTERESTS SIMILAR TO THOSE OF THE RESPONDENTS IN THE AFORESAID PETITION.

WILLIAM R. SEARS,
Counsel for Lucius Beebe et als.

ALDIS B. BROWNE,
ALBERT COMSTOCK,
Of Counsel.

THE ROCKWELL AND CHURCHILL PRESS, BOSTON.

IN THE

SUPREME COURT OF THE UNITED STATES.

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BRIEF ON BEHALF OF LUCIUS BEEBE & SONS AND OTHER BOSTON IMPORTERS HAVING INTERESTS SIMILAR TO THOSE OF THE RESPONDENTS IN THE AFORESAID PETITION.

The undersigned, counsel in other cases relating to the rupee of India, representing importers having like interests, ask to be allowed to file the following in reply merely to certain statements in the petition and brief filed by the Solicitor General. In so doing we wish to state our appreciation of the remarkably full, clear, and able presentation of the case contained in Mr. Comstock's admirable brief.

I.

In view of the argument of the petitioner, based on the large amount of money involved in this litigation and urged as a reason for granting the petition, counsel desire to point out certain aspects of the controversy, which they con-

fidently believe should convince the Court that no further delay should be imposed to the recovery of moneys which twelve decisions throughout a period of over eight years have declared that the importers are entitled to.

Until July, 1900, the following has been the form of proclamation, with reference to the rupee of India ·

Country.	Standard.	Monetary Unit.	Value in terms of U.S. Gold Dollar.	Coins.
India	Silver	Rupee		Gold: mohur (7,105). Silver: rupee and divisions.

"Treasury Department, Office of the Secretary,
Washington, D.C.

"The foregoing estimate by the Director of the Mint of the value of foreign coins I hereby proclaim to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on or after . . . expressed in any of such metallic currencies.

"(Signed)

"*Secretary of the Treasury.*"

No value has been placed in the space beneath the value in terms of U.S. Gold Dollar, because such value varied slightly with each proclamation.

When, in Mr. Cleveland's second administration, the exchange value of the rupee became substantially greater than its proclaimed bullion value, the Treasury Department, under Assistant Secretary of the Treasury Hamlin, required importations invoiced in silver rupees to be originally liquidated at the exchange value of the rupee, as certified by the consul. On protests being filed by the importers, the Treasury Department then required the collectors instead of

sending the protests to the Board of Appraisers to send them to Washington, under the claim that the Board of Appraisers had no jurisdiction over the matter in controversy. This practice continued until after the decision of the Circuit Court in the Beebe case in the fall of 1900, when the department abandoned this practice and ordered all subsequent entries to be liquidated at the proclaimed value of the rupee, and thereafter ordered reliquidation at the exchange value. In the spring of 1901, after the denial of the writ of certiorari in the Supreme Court in the Beebe case, fearing the effect of the one year statute of limitations, 18 Stat., 173, 176, the Treasury Department ordered all entries entered within one year, and which had been liquidated at the exchange value in the first instance, to be reliquidated at the proclaimed value. The entry in question is one of this class. *The other entries liquidated at the exchange value have never been reliquidated; the protests are still in the possession of the Treasury Department.* Although admittedly the government had no right to liquidate these importations at the exchange value of the rupee in the first instance, irrespective of the meaning of the proviso, the result was that by this means the government was enabled to compel importers to pay the duties at the greater value before they could obtain their merchandise, while if the proclaimed value had been followed the importers could have paid duties which they admitted were due, received probably their goods, and then on a reliquidation being ordered, have filed their protests and allowed the matter to rest until the government cared to send the protests to the Board of Appraisers, U. S. *v.* Goldberg, 168 U.S. 95. The hardship is apparent. The importers, without an opportunity to be heard or to obtain redress, have been obliged to pay duties at a rate admittedly at best in the first instance illegal, and have suffered the consequent

loss of interest on their money for a period varying from four to eight years, as the case may be.

The first of the protests to reach the courts, The United States *v.* Newhall (a protest against the liquidation by the collector at the exchange value of the rupee), seems to have escaped the watchfulness of the Treasury Department. It was tried in the Circuit Court on an elaborate stipulation of facts, and the scope and effect of the proviso of Section 25 of the Tariff Act of 1894 is discussed by Judge Colt in a masterly opinion which is annexed to Mr. Comstock's brief, and is as clear and lucid an exposition of the subject as is contained in any of the later decisions. *The United States took an appeal, but afterwards abandoned it*, without acceding to the importers' contention. Thereupon the Boston importers desiring to have their other cases heard, and met by the situation that their protests had been sequestered by the Treasury Department, applied to Secretary Gage and General Spaulding to send their protests to the Board of Appraisers. The result of the application, as the Boston importers claim, was that the Beebe case was selected as a test case and sent to the board for its decision. The history of the Beebe case is fully, clearly, and correctly set out in Mr. Comstock's brief, and it is useless to repeat it here. After the denial of the petition for certiorari upon a record of the government's own choosing, a stipulation in the case was carefully prepared by the Solicitor General and counsel for the importers with a view to obtain the opinion of the Court on the meaning of the word "value" in the proviso. The stipulation answered its purpose. Although the decision of the Court of Appeals was rendered in favor of the importers nearly two years ago, no petition for certiorari has been filed. The importers now feel that in view of the entire unanimity of the courts, including two concurring

decisions in the United States Circuit Court of Appeals in the first and fourth circuits, in view of the fact that the government has twice been defeated and abandoned similar cases in which this precise issue is involved (*i.e.*, Newhall and Beebe cases), that unless the matter is one of great doubt as to the correctness of the decisions of the lower courts in these cases, the importers should not be subjected to any further delay in the settlement of their protests, and they respectfully ask the Court to consider that in order to obtain their goods, in most instances, they have been obliged to pay duties at a rate which every Court thus far has decided was illegal, and in no event will ever be entitled to recover interest on their money.

The petitioners' estimate of the amount involved, moreover, does not take into consideration the fact that a very great majority of the protests now pending are against liquidation at the exchange value of the rupee in the first instance, a course which the government now deems to be illegal (see T.D. 22511), and any attempt to take any further proceedings after the reliquidation at the proclaimed value of the rupee will undoubtedly be contested by the importers. (See Sect. 21, act of June 22, 1874; 18 statutes, 186–190. See also reference in petition of government, U. S. *v.* Beebe, at page 7; see also end of opinion of Board of Appraisers, second trial, U. S. *v.* Beebe.)

Moreover, if the government means to maintain that any distinction should be based on the Indian Currency Act of Sept. 15, 1899 (see Petition, pages 14 and 15), the amount involved is comparatively trifling, probably but a few thousand dollars.

In October, 1900, the proclamation was changed. India was proclaimed to be on the gold standard, and the sovereign the principal coin. Since the importers generally have

acquiesced in this finding of the director, and no protests are being filed on Indian importations at the present time, the statement, therefore, in the petition that the issue is a present one would seem somewhat misleading.

II.

Page 24 of the petition contains the following statement: "No affirmative evidence shows in the present case that the secretary's instructions to the collector to liquidate the entry by valuing the rupee at 0.32 was not based on that coin's metallic value," and again on page 26, "The letter of the secretary ordering reliquidation of the entry in the present case, ante, page 5, shows that he intended to follow the proviso in Sect. 25, and no competent proof establishes that he acted in conflict therewith or adopted figures not based on metallic value."

The exact language of the order is as follows:

> "That satisfactory evidence has been produced to the Secretary of the Treasury showing that the value in United States currency of the foreign money of the invoices, viz., the rupee of India, was thirty-two cents at the date of the certification, which is ten per centum more than the value proclaimed during the quarter in which the consular certification occurred."

We are surprised in view of the unquestioned fact that, *as matter of fact*, the order for reliquidation was not based on any difference in bullion values of the rupee, a fact which the petition everywhere concedes, that the claim should be made, that *as matter of law* the secretary's order must be so construed. The question, then, before this Court is simply this: A controversy has existed for years between the

Treasury Department and the importers as to the meaning of a somewhat ambiguous phrase in a statute, the Treasury Department contending for one meaning, the importers for another, the latter being unanimously upheld in the courts. In this situation does the mere fact that the Secretary of the Treasury by repeating the language of the statute create a conclusive presumption that his finding is based on a construction of the statute which he has always contended was incorrect. We confidently submit that such a claim is on the face of it an absurdity.

There is obviously, therefore, no analogy between the action of the secretary in proclaiming the directors' estimate of coin value pursuant to the explicit direction of the body of the section and the action of the secretary in attempting to force importers to acquiesce in an illegal interpretation of the proviso. The body of the section is not ambiguous, it provides in clear and distinct terms the duty of the Director and the Secretary of the Treasury. Not even the Treasury Department would contend that it had the right to proclaim in the place of bullion value the exchange value of the coin.

> "This proviso was designed primarily to reach appreciated currencies, depreciations being provided for in Section 2903 of the Revised Statutes, but the words 'more or less' were used, and therefore depreciations likewise came within the terms of the proviso if amounting to ten per centum. The Secretary of the Treasury in ordering reliquidations is not limited to an ascertainment of the value of the pure metal of such coin of standard value as expressed in the money of account of the United States, his action being predicated upon a satisfactory showing of the value in United States currency of the invoice, not the coin, and independent of the pure metal contained therein. Any other interpretation renders nugatory the very purpose of the proviso,

viz.: to provide for appreciations and depreciations of currencies which could not possibly be stated by the Director of the Mint." Letter of General Spalding to Hitchings and Coulthurst Company.

The proclamation is conclusive because it purports to be, is declared to be, and is, an estimate of the bullion value of the coin, and unless this Court will construe, as a matter of law, the ambiguous language of the Secretary, admittedly referring to exchange value, to mean the pure metal value of the silver rupees of the invoice, it is submitted that this argument of the high prerogative absolutely falls to the ground.

As a matter of fact, however, construed in the light of previous acts and declarations of the Secretary of the Treasury, the letter is not even ambiguous, but clearly refers, not to a difference in metal values, but to a difference between the proclaimed metal value and the value in terms of exchange.

On Sept. 4, 1897, the secretary officially announced that the actual exchange value of the rupee, and not the proclaimed value, would be taken as a basis for estimating duties from India (T. D., 18327). In pursuance of this policy it directed its collectors to disregard the proclaimed pure metal value of the rupee and take the value certified by the consul (*i.e.*, the exchange value and expressly so declared in the consular certificate), and followed this by adding a footnote to the estimate of the Director of the Mint, "value of the rupee to be determined by consular certificate," although the body of the proclamation contained the estimate of the value of the pure metal of the coin. These rulings were in force when this shipment was made. The invoice in question bears the following consular certificate, Record 15 (fifth finding of fact):

"I further certify that the *exchange value* of the rupee, in which currency the annexed invoice of merchandise is made out, is at this date 32 cents, estimated in United States gold dollars."

Accordingly, on the 11th of July, 1900, the collector liquidated the duties by converting the silver rupees of the invoice at 32 cents for each rupee—the *exchange value* as certified by the consul (Record, 16). Against this liquidation the importers protested, on the ground that the proclaimed value should have been taken.

On Sept. 26, 1900 (T. D., 22511), the Treasury Department instructed collectors to disregard previous instructions of the Department (to liquidate according to the value stated in the consular certificate), and in future "you will be governed solely by the value proclaimed * * * for the quarter. * * * If such proclaimed value is *less than that shown by the consular certificate accompanying the invoices* you will report the fact immediately to this department, so that a reliquidation, should one be deemed necessary, may be ordered and the collection of the increased duties chargeable on such importations secured."

In other words, while adhering to its purpose of compelling importers to pay duties upon the basis of the exchange value certified by the consul, by this circular the Department announced its purpose of varying its procedure to reach that result, namely, to abandon liquidation at the exchange value in the first instance, but to reach the same result by an original liquidation at the proclaimed pure metal value and follow this up immediately by reliquidation at the exchange value certified by the consul.

On May 18, 1901 (T. D., 23059), the Department issued its circulars to the collectors as to all entries of merchandise

in rupees made within one year prior thereto, *not* liquidated at the proclaimed value, to reliquidate such entries at the proclaimed value. "Immediately thereafter (reliquidation) all the papers will be forwarded to the Department for such action as it may deem proper *in accordance with the instructions of Sept. 26, 1900.*" (Quoted above; *i.e.*, to reliquidate at the exchange value certified by the consul.) "*No refunds are to be made pending the receipt of further instructions from the Department.*" The papers accordingly were sent to the Department by the collector and on June 6, 1901, the Treasury Department returned them with a letter stating that satisfactory evidence had been produced to the Secretary of the Treasury showing that the value of the rupee was at the date of shipment thirty-two cents and directing a reliquidation accordingly.

Apparently no other evidence was produced to the secretary beyond the statement of exchange value in the consul's certificate. Apparently that was all the evidence the secretary wanted, from the tenor of his letter of Sept. 26, 1900, and apparently the only purpose of the secretary was by a different and roundabout procedure to restore the original liquidation of July 10, 1900, at the exchange value, and this was done. Admittedly the original liquidation was at the exchange value, and obviously the purpose of the order of June 6, construed in the light of the decisions of the Department regarding this very importation, was to restore that liquidation at the exchange value, and it did so. We confidently submit that the Board of General Appraisers could not have reached by any possibility any other result than it did, namely, that the order was not based on a difference in bullion values.

If any more affirmative evidence were required, we would respectfully call the attention of the Court to a letter written

regarding one of the very class of cases of which the case at bar is one, which would have been introduced in evidence had Mr. Comstock known of this instance at the time.

"TREASURY DEPARTMENT, OFFICE OF THE SECRETARY.
"WASHINGTON, April 4, 1901.

"Messrs. HITCHINGS & COULTHURST,
145 South street, Boston.

"GENTLEMEN: In reply to your letter of the 30th ultimo, further in regard to the reliquidation of entry of 17778, covering merchandise imported from India, and invoiced in rupees, I have to state that in cases of this character the appreciation of the money of the invoice is considered, and not, as you suppose, the appreciation of metal in the coin.

"Respectfully,
"(Signed) O. L. SPAULDING,
"*Assistant Secretary*,
"A. J.

"No enclosure."

III.

The petitioner contends (Petition, p. 27, paragraph 2) that the proviso gives the right to the secretary to substitute the exchange for the proclaimed value of a coin whenever he desires to do so. The attempted working of such a system is a practical demonstration of its fallacy. Thus for four or five years prior to the fall of 1900 the director of the mint had been estimating and the secretary of the treasury had been proclaiming the bullion value of the silver rupee of India in accordance with the provisions of the statute that requires that the "values so proclaimed shall be followed in estimating the value of all foreign merchandise exported to the United States during the quarter for which the value is proclaimed." Notwithstanding this statute, if the view of distinguished counsel for the government is correct, this proc-

lamation fixed nothing, for the secretary has the right to substitute in every case for the value of the rupee in the proclamation some other value independent of its coin value. Thus for years the proclamation of values of the Indian rupee has been absolute nullity, because the secretary has seen fit to act under the proviso. In other words, if the construction of the petitioner is correct, the secretary can, under the proviso, suspend the law.

It seems to be the argument of the petitioner and the contention of General Spaulding that the rupee was an appreciated currency, and that the purpose of the proviso to Sect. 25 was to provide for the assessment of duties in appreciated and depreciated currencies. It is inconceivable, however, that Congress, by the proviso to the Act of 1894, intended to cover such cases by introducing into that statute, *which dealt alone with metal values*, an authority by way of proviso which throws that controlling principle to the winds. Rather had Congress intended to provide for appreciated currencies, as the government's brief claims, this would readily have been accomplished by amending United States Revised Statutes, Sect. 2993, which now provides for a consular certificate to accompany invoices made in depreciated currencies, and under treasury regulations such certificate is made the basis of valuation. Thus Article 409 of the Treasury Regulations, Edition 1899, provides:

> "When invoices are made out in a paper currency which has become depreciated, the consul is instructed to verify the relative value of such currency as compared with the standard coin of the country of exportation, *the latter being the only currency recognized by the law*, and entries of such invoices must be reduced at the value so certified."

Such an amendment of Sect. 2903 would have reached correct values without requiring a 10 per cent. difference before the statute became operative; *furthermore, that method would, precisely as in the case of depreciated currency, have required no reliquidation or resort to proclaimed values*, and the importer could have told in advance on what basis he was to be obliged to pay duty. Indeed, if the theory claimed for the proviso in the Act of 1894 be correct, Congress adopted a most extraordinary method to reach such a plain and simple result.

IV.

On page 20 of the petition after a long quotation from the decision of Judge Putnam in the Beebe case before the Circuit Court of Appeals, the statement is made:

> "In view of the effect given the stipulation in the Beebe litigation, it seemed proper to submit the present case in which the government could finally present to this Court its exact contentions on all points,"

the inference being that the decision of the Court of Appeals proceeded from a misconception of the facts. As a matter of fact, however, an examination of the stipulation in the Beebe case, which was prepared by the present solicitor general, and signed by him, will show that the stipulation served the purpose for which it was intended, — to present the controversy between the importers and the government fully and clearly to the courts, and an analysis of the successive opinions by the Board of Appraisers, the Circuit Court, and the Circuit Court of Appeals will show that it fully served its purpose. A further quotation which appears on page 20 of the petition shows that the Court regarded the stipulation from the point of view most favorable to the government,

namely, "That the legal tender value of the rupee far exceeded its bullion value." Although these importers feel that had the government desired to petition for certiorari, fairness to them should have induced the Department of Justice to apply for the writ in the Beebe case, rather than in this case, and thus save a delay of almost two years, yet they feel confident that a careful examination of the record will show that the two cases are, in essential particulars, the same.

The writer has made no attempt to meet all the arguments of the petition, which are so fully and decisively answered in Mr. Comstock's brief, and in the opinions of the Court annexed to it.

We respectfully request that the petition be denied.

Respectfully submitted,

WILLIAM R. SEARS.

ALDIS B. BROWNE,
ALBERT COMSTOCK,
WHIPPLE, SEARS & OGDEN,
of Counsel.